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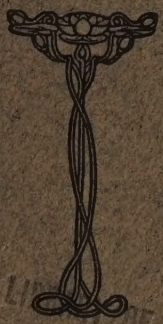
# REPORT OF HEARINGS

OF THE

# New Mexico Special Revenue Commission



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# New Mexico Special Revenue Commission

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# REPORT *of* HEARINGS *of the* NEW MEXICO SPECIAL REVENUE COMMISSION

*Held at Santa Fe, New Mexico*
*August 16-20, 1920*

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## STATEMENT OF CHAIRMAN.

The New Mexico Special Revenue Commission was created by the following act of the Fourth State Legislature:

CHAPTER 9.

An Act creating a Commission to investigate and report upon the Question of Adopting an Income Tax for the State of New Mexico, with reference to existing systems of taxation, and appropriating money to pay the expenses thereof.

H. B. No. 12; Approved February 21, 1920.

Be it enacted by the Legislature of the State of New Mexico:

Section 1. That the Governor of the State of New Mexico be and he is hereby empowered and directed to appoint a Commission of five persons, citizens of the United States of America, and citizens and residents of the State of New Mexico, who shall serve without pay and of which number not more than three shall be of one political party, which commission when appointed shall have power and authority to inquire into and make recommendations as to the policy or necessity of the adoption by appropriate legislation of a system of taxation of incomes and the relation of such a system of taxation to the present system of taxation of property in New Mexico, real and personal, tangible and intangible, the taxation of the net income of producing mines and all other methods and powers of taxation in force in the State of New Mexico or which may be recommended for adoption by the legislature of the State of New Mexico.

Sec. 2. Said commission shall have its office at the city of Santa Fe, New Mexico, but is empowered to meet at such places within the State of New Mexico as may be convenient for the transaction of its business; it shall have power to take testimony and to examine witnesses and for that purpose to administer oaths and the Attorney General of the State of New Mexico is designated as the legal representative of said board and authorized and directed to advise with and assist the said board in its investigations and hearings. The said board may also employ such clerical help as may be necessary in the conduct of its affairs.

Sec. 3. On or before the first day of January, 1921, the said board shall make full report to the Governor of the State of New

Mexico of its proceedings with such recommendations upon the subject of taxation and upon the subject of legislation affecting taxation as it may adopt and it shall further report its recommendations to the President of the Senate and to the Speaker of the House of the next ensuing regular session of the Legislature of New Mexico.

Sec. 4. There is hereby appropriated out of moneys in the Treasury of the State of New Mexico, not otherwise appropriated, the sum of Five Thousand dollars to defray the expenses of said commission. The moneys so appropriated or so much as shall be necessary shall be disbursed upon vouchers signed by the Chairman of the Commission and approved by the Governor. Itemized statements of the disbursements under said vouchers shall be filed in the office of the Auditor of the State of New Mexico.

Sec. 5. That it is necessary for the preservation of the public peace and safety of the inhabitants of the State of New Mexico that the provisions hereof become effective immediately and therefore an emergency is hereby declared to exist, and this act shall take effect from and after its passage and approval.

The members appointed under this act were H. J. Hagerman, of Roswell, chairman; W. G. Haydon of Las Vegas; Jo E. Sheridan of Silver City; A. G. Simms of Albuquerque, and John Joerns of Santa Fe. Upon the death of Mr. Sheridan, W. W. Risdon of Gallup was apointed to fill the vacancy.

The first meeting of the commission was held at Santa Fe, March 24, 25, 1920, for the purposes of organization and planning. At that meeting Rupert F. Asplund was made secretary, and Clara H. Olsen, executive clerk of the commission. Subsequent to the first meeting consultation has been carried on by correspondence, considerable material having been collected and data compiled by the secretary for the use of the commission. In order to have full knowledge of conditions and of public sentiment as to taxation problems, the following statement was issued by the commission:

## STATEMENT IN REGARD TO HEARINGS BEFORE THE SPECIAL REVENUE COMMISSION.

With a view to giving an opportunity to the representatives of various interests in the state, to make any statements in regard to taxation and revenue, as it affects these interests, there will be held in Santa Fe from August 16th to August 21st inclusive, a series of hearings by the New Mexico Special Revenue Commission.

By the law creating it, it is the duty of that Commission to recommend a revenue system to provide sufficient revenue to meet the needs of the state and local subdivisions, and to recommend a revenue system that will distribute the financial burden of supporting the state and local subdivisions with the greatest possible degree of fairness.

It is clear that the desire for equity was foremost in the minds of the legislators when they passed the law, and the controlling influence of the Commission it its preliminary investigations and in any conclusions it may reach will be to bring about the greatest possible equality in the distribution of the tax burden. It is with this

general idea in mind that the Commission is requesting representatives of the various interests to appear before it at the time mentioned. It is the opinion of the Commission that every dollar of wealth in the state should make an equal contribution in support of the government without regard to the class of property in which it exists and any tax that may be advocated other than that of the value of the property, must be subjected to the closest scrutiny.

It will not be possible for the Commission to have very extended hearings, and it is greatly desired that the representatives of various classes of taxpayers who desire to present their views shall arrange to do so in as brief and comprehensive a way as it is possible. The Commission wishes to give an opportunity to everyone who has something fair and definite to present to it, and with this view requests representatives or individuals who desire to be heard during the week in question, to communicate with the Secretary of the Commission at Santa Fe with a view of making arrangements for the times of specific hearing.

NEW MEXICO SPECIAL REVENUE COMMISSION,

H. J. HAGERMAN, Chairman.

Santa Fe, N. M., July 24, 1920.

The commission met according to the foregoing announcement, a preliminary session being held in the office of the commission in the Capital City Bank Building on the morning of Monday, August 16, 1920. This session was devoted to informal discussion. Formal hearing began Monday afternoon at the Supreme Court room in the Capitol. These hearings were continued with morning and afternoon sessions on Tuesday, Wednesday and Thursday. Further sessions were held at the office of the commission on the morning of Friday, August 20.

All sessions were open to the public. Among those present at various times during the sessions were the following:

MEMBERS OF THE COMMISSION.

H. J. HAGERMAN, Chairman, Special Revenue Commission. Governor Territory New Mexico 1906-7. President New Mexico Taxpayers' Association 1915-20. President Southsprings Ranch & Cattle Co.

W. G. HAYDON, Attorney at Law.

JOHN JOERNS, State Traveling Auditor and Bank Examiner 1910-12. Secretary State Tax Commission 1918-20.

W. W. RISDON, State Mine Inspector 1917-18. U. S. Auditor War Mineral Claims, 1919. State Coal Mine Inspector, 1920.

ALBERT G. SIMMS, Attorney at Law.

RUPERT F. ASPLUND, Secretary Special Revenue Commission, Director Taxpayers' Association 1918-1920. Former Secretary State Tax Commission, 1916-1917.

PROF. ROBERT MURRAY HAIG, Ph. D., Associate Professor of Economics, Columbia University, New York; Special Counseller to the Revenue Commission.

WITNESSES.

J. E. SAINT, President, State Tax Commission. Member territorial Senate, 1892.

CHARLES SPRINGER, Chairman, Board of Directors and Treasurer, St. Louis, Rocky Mountain & Pacific Co. President, Chas. Springer Cattle Co. President St. Louis Construction & Equipment Co. Ex-member State Board of Water Commissioners. Chairman New Mexico State Highway Commission. Chairman State Council of Defense 1917-20. President Selective Service Board 1917-18. New Mexico Field Secretary Council of National Defense 1917-18. Member Constitutional Convention 1910.

R. C. REID, Legal Adviser to Governor 1917; resigned and appointed President State Tax Commission, 1917; resigned. Chief of Selective Service Draft for New Mexico 1917-18. Ret'd. Major. President State Farm Bureau 1920.

J. VAN HOUTEN, President, St. Louis, Rocky Mountain Pacific Co. President, Swastika Fuel Co., Raton. Vice Prest. First National Bank, Raton. Vice Prest. Maxwell Land Grant Co.

J. M. SULLY, General Manager Chino Copper Co.

W. A. HAWKINS, General Attorney E. P. & S. W. System. Member Territorial Senate 1903.

VICTOR CULBERSON, President New Mexico Cattle Growers Association.

B. F. PANKEY, Lieutenant Governor, 1919-20. Member Constitutional Convention 1910. State Senator 1917-19. Stockman and Rancher.

F. W. CLANCY, Attorney General 1909-1917.

THOS. B. HARLAN, General Counsel, St. Louis, Rocky Mountain & Pacific Co.

O. P. EASTERWOOD, Attorney at Law.

GEORGE S. DOWNER, Attorney for A. T. & S. F. Ry. Co.

E. L. STREET, President Santa Fe Water & Light Co.

F. C. WILSON, Attorney at Law.

PERCY WILSON, Attorney for Chino Copper Co.

H. C. DENNY, Attorney for Chino Copper Co.

E. C. STIMSON, Ex-District Judge, Colorado. Attorney for St. Louis, Rocky Mountain & Pacific Co.

A. D. CRILE, President College of Agriculture 1918-20. Stockman and farmer.

CARL MAGEE, Editor and proprietor, Albuquerque Morning Journal.

GEORGE KASEMAN, Mine Operator. Member State Senate 1917-20.

GEORGE G. TUNNELL, Tax Commissioner A. T. & S. F. Ry. Co. Statement submitted in writing.

Others:

AVERY TURNER, General Manager and Vice President Panhandle and Santa Fe Railway.

O. O. ASKREN, Attorney General 1919-20.

NELS FIELD, Commissioner of Public Lands 1919-20.

H. S. BOWMAN, Assistant Attorney General 1919-20.

E. R. WRIGHT, Attorney at Law, District Judge, Associate Member Supreme Court 1910-12.

W. C. REID, Solicitor A. T. & S. F. Ry. Co. Attorney General 1906-7.
E. C. IDEN, Attorney at Law.

G. S. GILBERT, Attorney at Law.

E. E. ELLENWOOD, Attorney for 85 Mine, Lordsburg.

A. B. RENEHAN, Attorney at Law.

BRONSON CUTTING, Publisher Santa Fe New Mexican. Captain in late war. Colonel on Governor's Staff.

E. D. TITTMAN, Publisher Sierra Free Press. Member Constitutional Convention 1910.

J. W. GIDDING, Newspaper correspondent.

A. N. HOVE, Newspaper Correspondent.

GUTHRIE SMITH, Newspaper correspondent.

A. N. MORGAN, Newspaper correspondent.
C. T. BROWN, Mining Engineer, Supt. Empire Zinc Co. President Socorro State Bank.

J. P. ARGALL, Mine Operator.

E. M. SAWYER, Mine Operator.

N. C. CROSS, Mines.

I. J. STAUBER, Mines.

T. S. MORRISON, Mines.

ROY WALLER, County Assessor.

C. W. DAVIS, County Assessor.

W. H. SPRINGER, Wholesale Grocer.

W. O. LASATER, Wholesale Grocer.

DONALD STEWART, Wholesale Grocer.

H. F. STEPHENS, Accountant.

H. S. LUTZ, Agent A. T. & S. F. Ry.

CLARK M. CARR, Stockman.

C. E. SANFORD, Carpenter.

D. W. JONES, Member State Highway Commission.

EUGENE KEMPENICH, Member State Highway Commission.

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**MONDAY AFTERNOON SESSION, AUGUST 16, 1920.**

The meeting was called to order by the Chairman at 3 o'clock. All members of the Commission were present.

MR. HAGERMAN: We had an informal discussion this morning in regard to the income tax and I have requested Mr. Springer, and he has assented, to give us his views in regard to the matter so that they may appear in the record and proceedings of the Commission.

The main object of the Commission in going into the matter of the income tax is to find out, if we can, what the real necessity of an income tax in the State of New Mexico at this time may be, and if there is such necessity as to what the best method of procedure may be to secure the tax. Mr. Springer has given the matter a great deal of attention and we will be very glad indeed to hear from him in regard to the matter.

MR. SPRINGER: Mr. Chairman, as I told you this morning, my connection with the subject began at the time of the calling of the Extraordinary Session of the Legislature last year. It was called for the purpose, among other things, of ratifying the suffrage amendment and to see if some method could be devised that would equalize the burden of taxation among the citizens of the State, there having been considerable complaint as to the present system of taxation, and Governor Larrazolo requested several members of the Bar here to study the question of an income tax and to prepare a bill to be presented to the Legislature at the Extraordinary Session. We complied with that request, not only as to the preparation of a bill, but considering the necessity for an income tax and the effect of the levying and collection of such a tax.

The calculation made at that time of the amount of income tax to be produced by such a bill as we prepared showed that it would produce practically as much revenue as was being annually expended for State purposes so that if such income tax revenue were applied to the State purposes only there would be no necessity for levying a State tax upon property in the State. I am told now that our calculations were considerably too high and that probably such a tax as we proposed would not produce more than half, if that much, of the necessary State revenue. I still think that it would produce considerably more.

One of the chief objects of levying an income tax was to relieve certain taxpayers of the excessive burden under which they now labor in the payment of taxes upon their homes and upon non-productive personal property. We found, upon inquiry, that it is and has been a serious burden upon the working man and owners of homes in the cities and towns to pay the very high rate of tax they have to pay upon their small properties, and that not only affects the owner of a small home, but the renter, the tenant,—as the landlord must add the tax to the rent. While we did not consider that the income tax would materially increase the total revenues, it would be a shifting of the burden from the shoulders of people who are scarcely able to pay the tax to those who are able to pay from their surplus earnings and we felt that that was not only the most equitable method of taxation, but certainly the one that could be most easily paid by the taxpayers.

We met with a great many objections, but I will say that the objections were made chiefly by those who claimed that we could not levy such a tax under the provisions of our Constitution. We did not find, as I recollect, in our inquiries very many people who objected to paying the tax, at the progressive graduated rate even. The chief objection was that the method proposed was in violation of our Constitution and that was carefully studied by the committee appointed by the Governor, and we prepared the bill with the idea that it would come within the provisions of our Constitution, and we think it did.

It provided for a graduated income tax, classifying income taxpayers into five classes, according to the respective amounts of income, and the rate of levy was one percent upon the incomes of those in class A,—that is persons having incomes exceeding $1,000 we will say, and not exceeding $5,000,—and two percent upon those in class B; and up to five percent upon those in the highest class, being those whose incomes exceeded $100,000. It may have been those exceeding $50,000 that were taxed at five percent according to some of the changes made in the bill, but that was the general principal of the bill. We felt that there were a great many thousand people in the State,—well, one statement by a gentleman who ought to know something about it was that there were over 25,000 people in the State,—who would pay $10 a year or more and if the calculation were correct the tax would have produced over a million dollars per annum.

It was also proposed by that bill that the whole of the revenue derived from the taxes upon incomes should be collected by the State Treasurer,—the returns made to be to him,—and that if in any year the estimated revenue from incomes would equal or exceed the requirements for State purposes no levy should be made upon other property by the Auditor for State purposes; and if there were any surplus in any year over the requirements, that that should be considered in making the levies. So that it was expected and calculated that the State tax levy upon other property would be considerably reduced after the first year's levy. Of course the first levy necessarily would be made upon a very conservative calculation of the proceeds of the income tax—necessarily so—but the next levy would certainly be very much less than we have had heretofore upon property within the State.

Were there any questions you would like to ask now, Mr. Chairman, about it?

MR. HAGERMAN: You are familiar with the original clause of the Constitution in regard to taxation, which was amended. Do you know the idea at the time in that amendment—who brought about the proposal for the amendment? Do you happen to know the history of that?

MR. SPRINGER: Yes, sir, I think I do. I happened to be the member of the Constitutional Convention who prepared the original section which provided for a progressive income tax, as well as other specific taxes. The Article of the Constitution which contained that section also contained the provision that all taxes should be equal and uniform, the usual uniformity clause of the State Constitution.

Along about 1914 or '15 it was proposed to the Legislature that a law should be enacted levying a tax upon intangible property, that is money and credits, at a different rate of levy from that imposed upon property generally throughout the State, and it was discovered that that could not be done under the Constitution as originally adopted, because of the uniformity clause and those who advocated the intangible property tax proposed the amendment to the Constitution which was later adopted. In proposing that amendment and advocating it they urged that under the amendment the Legislature would have broader powers as to all matters of taxation than under the original section and that as the new amendment simply required that all taxes should be uniform upon subjects of taxation of the same class, the Legislature could levy almost any kind of tax by classification of taxpayers and this very thing was brought up at the discussions right here in this room.

There were public hearings on the subject lasting over several days, at least a week, before the committees of the Legislature of both houses, because it was a serious matter to attempt the amendment of our Constitution upon the subject of taxation. That very question was raised here—"if you adopt this amendment," and I stated it, "can the Legislature then authorize the levying of a progressive income tax and a progressive inheritance tax" and it was answered by those men, Stephen B. Davis was one of them and Herbert Clark another, that it could be done because the Legislature would have more ample powers than they have now and that it could be done by this classification method. I confess I thought so too, but it wouldn't have made any difference what I thought. I was opposed to the change absolutely and did everything I could to try to retain the old section as it was originally adopted, but we were defeated in the matter and the amendment was proposed and the people ratified it.

MR. HAGERMAN: You thought the income tax could certainly be levied under Sec. 2 of Article VIII of the Constitution as originally passed?

MR. SPRINGER: That was the purpose of putting in that section, so as to authorize the collection of a graduated income tax and graduated inheritance tax. It certainly could, because it expressly provided it.

MR. HAGERMAN: You are now of the opinion that under the present Constitution as it now reads a graduated tax could be made

operative without a further amendment of the Constitution, are you not?

MR .SPRINGER: Yes, sir, I believe that is the case.

MR. HAIG: Mr. Springer, did I understand you to say this morning that you thought the general scope of the Wisconsin income tax would be satisfactory for an income tax in this State?

MR. SPRINGER: I will state that the committee used the Wisconsin income tax law as a model for drawing the bill and that we endeavored to make it also correspond with the Federal income tax law so that the return made by the taxpayer could be practically a duplicate of the return he was obliged to make at the same time under the Federal income tax law, not only as a matter of convenience, but as a matter of certainty. We felt that every taxpayer would certainly make a correct return under the Federal law and if about that time he was obliged to make one to the State that in nearly every case he would simply make a copy, as near as he could, and send in that and do it all at the same time.

MR. HAIG: In your opinion if the State should establish an income tax law would it be desirable to establish some special administrative organization to administer it?

MR. SPRINGER: Well, the committee preparing that bill at the time thought that it was better to leave it to the State Treasurer to establish such a force as he might find to be necessary expecting that he would model his organization after that of the Federal Government as far as he could.

MR. HAIG: Do you believe it would be a good plan to make the staff which would administer an income tax a staff which would be under civil service regulations as a rule?

MR. SPRINGER: You mean that they should have to pass examinations?

MR. HAIG: That they should have to pass qualifying examinations and have permanency of tenure?

MR. SPRINGER: Would that be covered by the law specifically as to what examination they would have to pass?

MR. HAIG: What would be your opinion as to that?

MR. SPRINGER: You see that is not the case with the Federal Civil service.

MR. HAIG: It is not included in the law?

MR. SPRINGER: As far as I understand it, the Civil Service Commission determines the examination that each applicant has to pass. If we had a Civil Service Commission and if all the State employees were under the civil service rule I should think it would be proper to have the staff of the Treasurer under the same rule, but I doubt very much if it would be feasible to simply have the employees upon that staff under the Civil Service rule unless you had a general State Civil Service Commission.

MR. HAIG: You have nothing of that sort now?

MR. SPRINGER: We have not. By the way, Mr. Chairman, I want to state further that a suggestion was made at the meeting this morning for the application of the income tax, if the Legislature should pass such a law that the proceeds be applied to the maintenance of the public schools over the state. That is not only because people rather like to pay taxes for the maintenance of the public schools, but because it would be more easy to distribute the tax in that way than to endeavor to distribute it to all of the different state, county and city funds over the State. That would be a very complicated process, and the application of the funds to the maintenance of the public schools seems to be a very simple solution of the problem.

I didn't fully explain, a while ago, about the idea that the income tax was not to be an additional burden upon the people. We feel confident that the property tax to every taxpayer will be reduced, ought to be reduced, to the full extent of the proceeds of the income tax law, considering that the state revenues are now sufficient for state purposes. We studied that question at that time and we felt that if proper methods were used in the administration of State affairs the present revenues are not only sufficient, but more than sufficient to carry on the state government, and that with the income tax paid by those who were making a profit out of which to pay it, there would come a great relief to other taxpayers, and practicularly the taxpayers who are making the most complaint as to the present system of taxation, and justly so because the tax is very, very heavy upon them.

MR. HAGERMAN: If there be any reduction in the general rate of taxation, due to an income tax, it would have to be a reduction in the general levies in the property tax?

MR. SPRINGER: Yes, sir, and it would undoubtedly cause a great many people who are receiving the benefits of our government to pay a reasonable tax who heretofore have never paid any tax at all.

MR. HAYDON: Would there be a duplication?

MR. SPRINGER: No, sir, it would not be a duplication. Well, it might be a duplication to some extent. Persons who own large properties in the State, real estate we will say, upon which they derive large incomes and upon which they pay now a property tax would pay an additional tax, but the total tax that they would have to pay would probably not be much, if any, more, because the rate of taxation upon their property would be lessened to that extent. That is what I am getting at.

MR. HAIG: Would you be good enough to explain how you would relate the income tax to the present system of taxation in regard to a set-off of taxes?

A. Well, under the Wisconsin law a person whose income was derived from personal property and who paid a tax upon that personal property was permitted to offset his personal property tax against his income tax. That is to say, he produced to the Treasurer a receipt showing that he had paid a tax upon personal property upon which a certain amount of income was derived for that taxable year. That

amount that he had paid on his personal property would be offset against his income tax, but he had to prove to the satisfaction of the Treasurer that he was entitled to that reduction. In other words, that he was entitled to that much reduction on account of reporting income from that particular personal property. That was carefully considered in the regulations of the Tax Commission of Wisconsin and it was supposed that that would be done here in this State too. One of the provisions,—I don't know whether it was left in the bill at the last or not,—was that the Tax Commission should have the same regulations over the matter as the Tax Commission of Wisconsin had under their law.

FURTHER QUESTIONS BY MR. HAIG:

Q. If an income tax were passed in this State you would favor the continuation of the assessment of personal property under the present arrangement and the establishment of such a setoff?

A. Well, that was the opinion of the committee that prepared that bill, that on account of our having so many cattle men and sheep men and others in the State who were paying taxes on personal property, that it was an equitable thing to do. That was the opinion at the time.

Q. Would it be desirable, in your opinion, to classify personal property and apply a lighter rate if an income tax were to be established?

A. Well, I believe that would require a constitutional amendment to do that.

Q. Did I understand you to say, in your preliminary statement, that this particular provision of the Constitution had been designed with that object in view?

A. That is what they stated.

Q. Yet it didn't accomplish that?

A. Well, perhaps I didn't express myself clearly. It might be done if the theory of the persons who made this amendment was upheld by the courts. It could be done by classifying property, but it must be a reasonable classification and I have some doubt about classifying the kind of personal property they have in this state, except perhaps putting intangible property in a class by itself. That has been done in many states, and could probably be done here, but as to other personal property, I have very grave doubts about it.

Q. Would any useful end be served, do you think, by putting intangible personal property in a separate class and subjecting it to a lighter rate?

A. If the amount of intangible property in the State is as much as a good many people have estimated, it would produce considerable increase in our revenues.

Q. Is that your own impression, that the amount of personal intangible property in the State is large?

A. I don't think it is.

Q. Can you make any quantitative estimate at all?

A. No, sir, I cannot. Unless it should include bank deposits, I don't believe that it would produce a very great deal of revenue, and I don't believe it is possible to tax bank deposits, because if you undertake to tax bank deposits you immediately lose the source of revenues and your deposits will go elsewhere.

Q. In any case, you would allow a deduction from the bank deposits for any debts individually due, I presume, so that that might operate to reduce the amount very materially, don't you think?

A. Well, that is always done. Now under our law as we have had it for years, every resident of New Mexico is required to make a return of his intangible property and permitted to offset his debts against the value of his intangible property. That is always the case.

Q. So that the amount of gross bank deposits as found in the bank statements wouldn't be any guide at all?

A. No, sir.

Q. The income tax bill as drafted by you included, as do all income tax laws in this country, the proposal to tax profits from appreciations of property values, I believe?

A. Yes, sir.

Q. The date fixed in the law from which the values which would become taxable are measured I believe was January 1st, 1919?

A. Yes, sir, the first of the year in which the tax commenced.

Q. Would you be good enough to say whether you think that it would be a fair proposal to assume the datum line used in the Federal law, that is March 1st, 1913, as the date from which to measure such questions in New Mexico under the income tax law?

A. Why I think it would be fair enough if the question should be allocated over the intervening years.

Q. Only in that case?

A. Yes, sir, I don't think it would be fair otherwise.

Q. You wouldn't favor, then, following the Federal practice in that particular It would be desirable to depart from it?

A. I think it would. I think the Federal principle is not equitable.

Q. As to the legal standing of such a proposal, do you believe the State would have a right to tax appreciations no matter how far back the datum line stood?

A. I think it is very doubtful as to the power of the State. I haven't had occasion or time to look up the question, but I wouldn't like to say that the Legislature would have that power.

Q. In general you would favor utilizing the Federal procedure and Federal returns as fully as possible?

A. Yes, sir.

Q. Would you kindly express your opinion with regard to the Constitution, or discuss the question of the constitutionality of what is ordinarily known as exemption under an income tax measure? I understand that in the bill that is passed the sum which is allowed as an allowance ordinarily ascribed to necessary living expenses, etc., is considered not an exemption, but rather a type of deduction. Would you be good enough to discuss that point so that we might get the point of view of those who drafted that bill?

A. Well, the committee drafting the bill met with the objection at once that the income tax must be levied against every person who had an income; that under our constitution the Legislature was not empowered to exempt from taxation property except that specified in the Constitution and that they could only exempt generally property valued at $200 owned by the head of the family. Well, we met that objection to our satisfaction by providing that every person having an income above a certain amount was entitled to certain deductions from his income, among others a flat deduction of a thousand dollars, and if his income was less than a thousand dollars of course that deduction wiped out all taxable income, all income, and none of it was taxable, and that each income taxpayer was entitled to certain other additional deductions. It was proposed, or rather suggested at the meeting this morning, that to cover that point, the income tax law, if any new law on the subject is to be passed by the Legislature, should provide that every person should pay a tax upon his income even if it were only a very small income. That is to say, that every person having an income of less than a thousand dollars should pay a tax of one dollar per annum, or some stated amount which would apply to all within that class, and that the principle adopted in the bill that was prepared at the last session would be satisfactory as to those having higher incomes. I think there may be something in the suggestion, and certainly if the classification principle is constitutional, this suggestion of levying a tax of one dollar upon every person having an income of less than a thousand dollars would meet the objection as to the power of the Legislature to grant exemption.

Q. I understand that you were guided somewhat in your decision that the New Mexico Constitution did permit a tax of this sort by the fact that a similar constitutional provision in Missouri had been upheld by the courts?

A. Yes, sir, that was considered by us at the time as practically settling the question in this state because of the similarity of our constitutional provisions.

Q. The Missouri provision contained language regarding classification that was similar to the language in this constitutional provision?

A. The law there did not contain the classification provisions specifically as our bill did, but it must have been on the same principle, that those subjected to different rates of income tax were subjects of taxation in different classes.

Q. Do you happen to know whether the Constitution of the State of Missouri contains the uniformity clause found in so many constitutions?

A. My recollection is that it contains about the same uniformity clause as is now in our Constitution; that it provides that the taxes shall be equal and uniform upon subjects of taxation of the same class. I think the language there is "upon the same class of subjects."

MR. HAGERMAN: I notice in the law, Mr. Springer, that you have the collection of the tax provided for in the hands of the Treasurer of the State. Do you think it would be as wise to have it in the hands of the Treasurer as in the hands of the Tax Commission?

A. Well, we followed the Federal plan in that respect as the Tax Commission of this State has heretofore not had the assessment of any taxes. Well, we followed the Federal plan in that too, that the assessment should be made by the Treasurer and that the party making the returns should send in the tax to the Treasurer. There is a provision for a review. We discussed that matter at the time and it seemed that the Tax Commission didn't at that time have the facilities for making these assessments. They are simply afforded review as to valuations.

FURTHER QUESTIONS BY MR. HAIG:

Q. In view of the difference in the Constitution of the Tax Commission now as compared with what it was then would your opinion be the same as to the desirability of placing the collection of the tax in the Treasurer rather than in the Tax Commission?

A. Has there been any change?

Q. Well, there was a change about 1919. They have a full time Commission now and have some original functions of assessment which they didn't formerly have.

A. I don't see that that makes any difference.

Q. The Treasurer has no other assessment functions, has he?

A. Well, he has the collection of the gasoline tax, for instance, which he will pretty soon begin to collect.

Q. Do you think that it is in general desirable to centralize those assessment functions rather than to scatter them around?

A. It is purely an assessment function, I think it ought to be in the hands of the assessing officers.

Q. But the Treasurer ought to get the checks?

A. But this isn't exactly an assessment proposition. This is a tax to be determined by a man's own return and I don't know why the Treasurer can't investigate as to the truth of that return just as well as the Tax Commission could, or the Assessor. That is all there is to it. It isn't particularly an assessment, it isn't a valuation of property to be formed by someone who will view the property, it is simply ascertaining the correctness of the man's income tax return.

Q. Well, I understand that the assessment of property generally here rests almost entirely upon the individual statement?

A. No, sir, it rests upon the judgment of the Assessor, who is required by law to visit the property of every person and view it and count it up.

Q. Is there any positive reason, in your opinion, why the Tax Commission shouldn't have the administration of the tax if it seemed desirable on general grounds to concentrate the assessment?

A. Well, I think the best reason is that the people of the counties are accustomed to the other system and that they will not make the change, willingly consent to the change.

Q. I was speaking of the income tax alone.

A. Why I doubt if the Tax Commission has the time to do it.

Q. Someone would have to build up an organization. The Treasurer hasn't either, has he, as it now stands?

A. It seems to me it makes the matter more complicated if the returns have to be made to the Tax Commission and they have to then determine how much tax a man has to pay. I think it is much simpler to have the returns sent in to the Treasurer and the check accompanying the returns, just as they do with the Federal income tax returns, and I don't see why the Treasurer can't have whatever organization is necessary to test the accuracy of those returns just as well as the Tax Commission, and the Tax Commission has a lot of other things to do. The Tax Commission has not caught up with the work of establishing the values of property over the State for purposes of taxation. They have only commenced on that work recently.

MR. HAGERMAN: Is it your opinion that the present mine tax law is properly to be interpreted as an income tax?

A. No, sir. The present mine tax law is an ad valorem tax upon the real estate and upon what personal property is included.

MR. HAIG: Do you think it rests for its constitutionality upon the fact that it is an ad valorem tax?

A. In other words you question whether it would be constitutional if it were a production tax?

MR. HAIG: Yes.

A. Well, a production tax has been declared unconstitutional by the courts of a good many states. I haven't thoroughly considered it as to the provisions of our Constitution, but I know that in some discussion that occurred a couple of years ago about the constitutionality of the present mine tax it was clearly shown that it is a property tax and an ad valorem tax and it is a tax upon tangible property in proportion to its value. Those were the objections to it; that it was a tax upon tangible property upon some other basis than upon its value.

MR. HAGERMAN: Was that decision reached by virtue of any particular clause in the law itself, or after a careful discussion of all

angles of the law? Isn't there a clause that specifically states that it is in lieu of the ad valorem tax?

A. Yes, it states that it is in lieu of any other tax upon the mineral values but it is considered a basis for determining the mineral value.

MR. HAGERMAN: In that case an income tax would not interfere with the operation of the present mine tax?

A. Well, it was stated in the bill that was prepared by this committee that I mention, that the personal property tax that might be an offset against the income tax should not include the taxes paid under the present mine tax law. In other words, it will prevent the Mining Companies from offsetting the tax that they now pay against their income tax. They would have to pay an income tax in addition to the present tax which we consider to be a property tax, but not a tax on personal property. We considered that it was principally a tax on real estate.

MR. JOERNS: How about the personal property of railroads and other corporate property?

A. Well, to any extent that they paid taxes on personal property they could use that as an offset, and likewise a Mining Company could use whatever taxes it paid upon horses or mules or other personal property, as an offset. That wouldn't amount to much.

MR. HAGERMAN: Are you still of the opinion that the offset as provided in the present law should be in any law that is passed?

A. I wouldn't like to give that as my opinion. I am just stating that it was our opinion at the time that that is what the people generally demanded.

MR. HAIG: Do you think still, as you thought when you drew the law, that a progressive scale is preferable to a flat rate as a tax?

A. I certainly do.

MR. HAIG: In case it were deemed desirable to make a flat rate what would be the highest rate which would seem to you to be practicable, in view of the present heavy Federal taxes?

A. Well, I don't think that it should be a flat rate. I think that those that are receiving the higher incomes are much better able to pay at a higher rate than those with the lower incomes are, even to pay the low rate as provided in the bill, and I think it would be a great burden upon those receiving small incomes to put up the rate to even two or three percent.

MR. HAGERMAN: If it should be decided by the revenue Commission in its recommendations that it would be unwise to recommend a law with a graduated scale because of its probable unconstitutionality, don't you think that a law providing for a flat rate would be desirable and acceptable rather than to go to the trouble of recommending a constitutional amendment in order to bring about the former law?

A. Well, why not do both, if you want to do that, have an income tax at a low rate and recommend the adoption of an amendment which would permit a taxation of larger incomes at progressively higher rates?

MR. HAGERMAN: Then if the amendment was passed substitute the other law at the next session?

A. The next session of the Legislature could provide for higher rates upon large incomes.

MR. HAYDON: The only point I wanted to have clear in my mind is that there would be no duplication of the payment of this tax. In other words, the man who pays a general property tax would not pay an income tax which would cover his general property tax also. His income would be based upon sources other than such income as he might receive on property which he had returned and paid a general property tax upon.

A. Well, that distinction would only apply as to the property tax upon personal property; if his income were derived from real estate he would not only be required to pay the tax, as he does now, upon real estate, probably at a lower rate, but he would be required to return and pay taxes upon the income derived from that real estate.

MR. HAYDON: There is a specific deduction as to taxes paid upon property from which income is derived?

A. As to personal property, but not as to real estate. That was the Wisconsin principle and that was the one we adopted in drawing our bill.

MR. HAYDON: Why is there a distinction made in that, Mr. Springer?

A. I judge it is because in a good many of the states there has been a tendency to exempt personal property from taxation and that was particularly as to livestock and perishable and shortlived personal property. Because of the danger of loss and the perishable character of the property, it was considered that it wasn't right to tax it. A man might be taxed on cattle, horses and chickens and they might all perish and he get no revenue out of them. That is the only reason I know for making that distinction, on account of the perishable nature of the property. I don't say it is a just distinction, but that was stated as the reason for it in Wisconsin.

MR. HAYDON: Would it be advisable, or could it be done successfully, to allow a man to return and pay his taxes as now on his general property and then make his income tax return on all other sources of property and pay the income tax on that basis, or on that property?

A. Certainly it could be arranged that way, yes, sir.

MR. HAYDON: It would not be as advisable as the plan which has just been discussed?

A. Well, no other state has adopted the plan that you mention.

MR. HAGERMAN: Section 1 of Article VIII reads as follows:

"Taxes levied upon tangible property shall be in proportion to the value thereof and taxes shall be equal and uniform upon subjects of taxation of the same class."

Sections 1 and 2 of Article VIII of the original Constitution are as follows:

(Sections 1, 2 and 3 read.)

MR. HAGERMAN: Mr. Springer, is there anything else you would like to read into the record?

A. With regard to the income tax, no, sir.

MR. HAGERMAN: Dr. Crile, I understand that you have some views in regard to this matter. We would be very glad to hear from you.

DR. CRILE: Mr. Chairman, I didn't come prepared as I should have, and I apologize for it, not purposing, as a matter of fact, to appear before you when I left home. I am only interested, and have been for some time, in a phase of what I might term an income tax.

If I may make a general statement, it would seem to me that our custom and method of taxation, which is historical in our country, was that property was owned and should be taxed. Other than property owners or merchandise people, the balance of the community was made up of lawyers, preachers and doctors, who were public beneficiaries and should be excused. Since that time we have developed a new class of citizenship whose incomes are steady and substantial and who, I think, have escaped very largely under the cloak of charity originally bestowed in this country on the school teacher, doctor and lawyer. I refer to the wage earning class in its broadest scope. It seems to me that we are clearly in two classes; those of us in citizenship who have physical defects or conditions over which we have no control, who claim public charity of others who contribute to the public benefit. We have developed a large group in the twilight zone who are neither afflicted, nor do they support our country. To be specific, we have an instance of a man who was earning $3,000 a year, who was living in a small town, whose personal property is exempt, who is the proud father of seven children and sends them to the public school. Adjoining the town is a farmer with 20 acres of land, a few wagons, horses, fences and small buildings, whose child goes to an inferior school but who is taxed to support the school that educates the seven children of the man who pays no taxes, with a certain income and much better able to pay taxes than the farmer. That man should be reached by some tax law which we now haven't got. I don't consider that any man who looks at it properly would feel happy to realize that the education of his family and the police protection of himself has been paid for by the rich and the poor who happen to possess physical property and who are assessed. From the standpoint of culture of his family and his own protection he belongs to the charity group of our community and he should be taken out of it and I think he would feel better after he is out of it. I would take him out of it by putting him under an income tax, and I would exempt no man on his personal property, not a dollar. The exemption of $200 on a man's

personal property or any other amount I think is faulty and should not exist.

As to the income tax, I should lay on a flat rate so that if I paid only fifty cents to the support of my country and my state and my community, I am paying every bit my pro-rata share with the man who pays $5,000. I don't take it that the paying of taxes is a case of any economic disaster. The objection to the paying of taxes is purely phychological. A man don't go bankrupt nor broke by paying $1 or $500 taxes. They object to it because of the historicity of the thing. Men are working on farms today who are receiving a thousand dollars a year who would be glad to pay $5 or $10 taxes. They would feel better. They would appreciate more the school system and more the organization of their community and would be more kindly in their criticism of it. I should like to see the tax law revised in such manner that every man and woman able bodied and physically competent should pay either on personal property, real property or income a tax to New Mexico. Now that is rather a general statement, Mr. Chairman, but I wish to make it.

MR. HAGERMAN: I am very glad to have it from you. I think there is a large class of wage earners who are not now reached at all and who would be reached under an income tax.

MR. CRILE: I am satisfied of it. I am not prepared with statistics in the matter, but such investigation as I have made would indicate that a very large percent in each community should belong to that group, and I don't feel that it is a hardship on them. It is a criterion of whether a man is happy and prosperous or not if he pays taxes. His grumbling under it is largely a matter of phychology. The income tax on a large property and on large interests I think is an excellent one. I am not in favor of the progressive tax. I am in favor of a flat tax and if the incomes are unwieldy and wholly too large so that we should try to offset them by a progressive tax I would rather reach that concern for profiteering and let them pay some sort of tax.

MR. HAGERMAN: Major Reid, you have had a good deal of experience in this matter, especially in the lines Dr. Crile has been talking about.

MR. REID: I should like to say a few words. It seems to me it would be highly discriminatory to offset taxes put on personal property and not on real estate. I conceive of a man having an equal investment in cattle running on Government range as against the farmer having his investment in land. The farmer would actually pay twice as much taxes as the man with the cattle on the range. That condition doesn't exist in Wisconsin. They don't have the same proposition. I don't know what the proportion is, Mr. Joerns may be able to show, as to the value of the personal property in the State as against the real estate, but it seems to me it would be highly inequitable to not allow an offset to taxes paid on real estate. I see no just reason for it in this state where, as I say, it is pretty much a question of agriculture or cattle or sheep. I see no reason why the man working on a farm should pay what would be in effect double the taxes of the man who has his investment in personal property. It seems to me such a law, in reaching persons who pay no taxes, would only be half effective. Mr. Hayden, I think, brought that line out. I believe that was what

you had in mind, and that is, I believe, the view that the agricultural interests in the State would take in the matter.

MR. HAGERMAN: Would you be in favor of eliminating taxes if there were no exemption on personal property, or—

A. No, sir, I would be in favor of an income tax if offsets were allowed on both personal and real.

Q. Do you think that would result in any material income from an income tax?

A. I think it would, yes. What is the payroll, Mr. Turner, on the Santa Fe Road in New Mexico?

MR. TURNER: Oh, I couldn't give you any estimate, $5,000,000.

MR. REID: And the mines and the other railroads in all probability make available a good many million dollars that don't pay one cent of tax now. I don't know what the mines or railroads pay, but it is enormous. If there is no exemption below a thousand dollars a year it would reach every man in the State of New Mexico, practically, and it should. I believe in a graduated scale. I believe we are all born free and equal in ability to acquire.

MR. ASPLUND: What chance do you think a law like that would have to get through the Legislature?

A. It would probably ruin the party that advocated it.

MR. CRILE: I think the farmers and stockmen of the State when they pay their taxes and desire to call a plumber and carpenter who gets a dollar or a dollar and a quarter an hour, who works leisurely, very leisurely, and many of whom don't help support the State (some do of course) they have a perfect right for resentment and I think that feature of the case might go a long ways toward helping the Legislature and other people to see which way that matter might operate. The farmer pays taxes on his farm the years he makes nothing and the years he makes something; it is right there every time and he never quits paying taxes. Many people pay taxes in prosperity and none in other times but the farmer pays it and adds it on top of his hard luck the year the bugs eat him out or the blight kills him or disaster overcomes him or he makes nothing, he pays his taxes and it is time this "twilight zone" crowd came in with theirs.

MR. REID: To illustrate, I might say that if any of us who are farming, if we were so disposed, had the amount we had invested in agricultural property loaned at 8 percent interest we could cease our labors, pay no taxes and have a darn sight more money at the end of the year than we do by devoting all our time and energy to it.

MR. HAGERMAN: Do you think, from the standpoint of public policy, irrespective of the amount to be realized from an income tax, under present conditions as they exist here, it would be a wise thing to secure the passage of such a law?

MR. REID: It would be an extremely wise man that could secure it, I should think. I believe in the end every man would have more

self respect if he participated in the expense of our government and schools.

MR. HAIG: I would be interested in having Dr. Crile suggest how the man that he suggested earns $3,000 and has a wife and seven children, how we could get at him under an income tax. Would you favor an income tax with very low exemptions?

DR. CRILE: I wouldn't exempt him under the State tax below $600. The dead line would be $600. He would pay taxes for $2,400. If there were two men here, one who earns $3,000 and pays no personal tax,—and to illustrate it his income tax would be $75,—the next man owns town property and pays on his property and a personal tax, I would take the higher tax of the two. If the income tax were higher than the other I would take that; if the other were higher I would take that. I wouldn't make him pay twice, but would take the higher one.

MR. HAIG: Of course the administrative difficulties become very great. As you lower that exemption it brings a larger and larger number under that income tax and it would cost a great deal to administer the income tax.

DR. CRILE: Wouldn't a form submitted to a man who earns a thousand dollars a year be as readily executed by him as a by a man who earns $50,000?

MR. HAIG: Yes, but in order to get $1,000 revenue it would cost $10,000 and there would be no check in the Federal returns. What do you think of the idea that developed in the course of Mr. Springer's discussion to the effect that in the case of smaller income groups there might be a flat tax arranged?

DR. CRILE: I wouldn't favor that because of the principle involved that I think a great deal of, and that is they should pay taxes and pay them equally and I think this whole matter of income tax should rest for its collection on the Tax Commission who should administer the whole business, should do the assessing of the whole state, should know how to produce their incomes and should pass on all the budgets and all the expenditures. With that sort of organization you would have already in every locality employees and representatives of this Tax Commission and it would be very little additional trouble for those men to look into the proper returns of the incomes but if you had a separate group of men to go out you duplicate the thing. The distance of travel, etc., would make it very expensive. If the Tax Commission should have larger authority in taxing and also in assessing and appraising of values and getting the values in the State equitable on equal lands in different counties they would need a certain amount of machinery to do that. That same machinery could very readily check up, which would be easier done on salaried people and on income people, and this Commission could pass on the returns as made out and as brought in and those that they O. K. on the face of them would be finished and those that are not would be reported back to the workers in the community from which they were rejected, and without much expense you would have a check on people in that community. Now if there was such a check there I don't think you would have any difficulty in making out the proper form.

MR. HAIG: I understand you favor complete offset, even using the receipts ofr taxes on real estate as tender for payment of income taxes?

DR. CRILE: No, personal property.

MR. REID: Why limit it to personal property?

MR. HAIG: With regard to the offsets, suppose a man is assessed a hundred dollars income tax. What tax receipts would you favor being made acceptable in payment of that income tax?

DR. CRILE: I would take any personal tax and real estate property tax and subtract it from the income tax, if that were higher; if my income tax were lower than that I would pay on my personal and real.

MR. HAIG: Just state this suppositious case to see if I have you right. Suppose a farmer has a farm worth $10,000 and has an income calculated for income tax purposes, of $3,000. Suppose a worker in a city has an income of $3,000—this plumber we were talking about. Do you think it would be fair that the tax on the two should be exactly the same?

DR. CRILE: That is the taxes on the income of the two?

MR. HAIG: No, the total taxes of the two.

DR. CRILE: Yes, sir, the tax should be equal on the two. The man who earns $3,000 in town should net to the society the same amount of tax as the man who has $3,000 income on a farm.

MR. HAIG: It doesn't seem to you the income from the future of the farm, with capital back of him, is greater than the manual laborers?

DR. CRILE: No, I don't think I would make that distinction, because the trades and organizations are no longer in the hazardous condition that they formerly were.

MR. HAYDON: I wanted to ask Dr. Crile why he opposes so strongly the graduated tax and favors the payment on a flat rate?

DR. CRILE: For this reason. I feel that the amount of taxes and the method of taxing me and my fellowman carried with it a certain principle of equity in society and I want to feel that I am contributing pro rata equally with any other citizen's contributions pro rata and if a man has ability, which they have and always will have, to accumulate over me, if his accumulation becomes great over me I don't want him to express it to me by doing more for my society than I do but I would rather reach him by some other system and handicap him in some other economic way. I don't think it is right for a man who has a hundred thousand dollars income, or a corporation which has a hundred thousand dollars income, to pay a tax of three percent on the same fair valuation on which I pay one percent.

MR. HAYDON: It is simply, then, a matter of pride on your part, largely?

DR. CRILE: Well, I wouldn't say it is pride, I would say it is a sense of equity in the thing.

MR. HAIG: Do you think you are as able to pay three percent as he is?

DR. CRILE: I think so, if I am taxed properly and valued properly, I think I am, just on the basis that whether I pay this year a hundred dollars tax or $85 tax or $115 tax is of mighty little consequence in my life. I will holler with a $15 tax raise and I will buy an automobile tire and rush it against a stump and tell my friends what a good joke it was and it will cost me $55. That is psychological.

MR. KASEMAN: I would like to ask Mr. Joerns the question that Major Reid asked him a moment ago.

MR. JOERNS: Personal property valuation?

MR. KASEMAN: About the amount of personal property assessments in the state.

MR. JOERNS: A hundred million dollars, just about.

MR. KASEMAN: That would be over one-fourth of the total assessed value. Now if we were to exempt,—I should not use the word exempt, but use as an offset the personal property tax where an income tax had been returned, we would be sacrificing one-fourth of our assessed values, or we might be sacrificing them, and that would very materially reduce our income tax so that we wouldn't be getting very far if we allowed any exemption and therefore I don't think an exemption should be allowed. From what was said in the discussion this morning I think that it would be better to continue to assess our cattle and other personal property, as we are doing now, and have the income tax in addition.

MR. HAIG: Would you favor an offset for taxes paid on intangible personal property? Where would you draw the line?

MR. KASEMAN: What particular class of property would you call intangibles?

MR. HAIG: A mortgage. A person receiving interest on a mortgage and granting that that mortgage should be listed for taxation, as occasionally one is returned I understand, and a tax paid upon it, would you want to allow an offset on that?

MR. KASEMAN: I hardly know about that. We figured this morning that there is a little more than a million dollars that we have in that class of property that we are collecting taxes on in the state. I am not inclined to express an opinion on that.

MR. HAIG: You are rather inclined to think there should be no offset?

MR. KASEMAN: That would be my view upon it because we are creating a whole lot of disturbance. There is one thing about this income tax, that is about the graduated income tax as it applies to New Mexico, that occurs to me would be harmful, or might be harmful, and that is this. Suppose I have a hundred dollars and I want to use it to develop something and the hundred dollars is not enough. My friend here has a hundred dollars and another one a hundred. Now

by our all joining that money to do something which requires the three hundred dollars possibly we should have multiplied that by thousands or hundreds of thousands. We can do something that is worth while in this state, but immediately we do that we bring that income up to such a high gross amount that we are individually penalized, say, for a five percent income tax where if we had done our share individually we would have only been taxed one percent. To that extent the income tax would discourage the accumulation of small amounts of capital into a larger amount that might do a good deal of good. That is a thought that occurred to me and I thought it worth while expressing it. I would not be in favor of any deductions.

MR. REID: What is the motive in this income tax law? Is it to make a more equitable assessment, or increase the revenue?

MR. HAGERMAN: I think the motive is divided—that it is both to make a more equitable assessment and to increase the revenue.

MR. REID: That accounts for the difference. There should be no exemptions if it is purely a question of getting more money but if for an equitable assessment there should be offsets on all classes of property. The latter plan I believe I would be very glad to approve but if it is to raise more money I don't believe the taxpayers in the state would be agreeable to it.

MR. HAIG: Would it seem to you to be equitable to couple a tax on all property with a tax on all incomes with no offsets either way?

MR. REID: That is what is proposed. That would be simply raising more money.

MR. HAIG: No, suppose with a given amount of money,—make it abstract,—

MR. REID: That is impossible. I have been talked into a good many bond issues for municipal ownership on the theory that the taxes would be reduced. I have never yet seen a city, town, village or state that ever spent any less money and if an income tax law goes into effect,—

MR. HAIG: Strain your imagination for a moment. Do you think, theoretically, a tax on all income, in addition to a tax on all property is such a horrible view to take?

MR. REID: I think it is just half equitable. I think there should be an offset on everything to make it entirely equitable. So far as it being strictly a question of the wage earner against the agricultural man, the farmer, why the wage earner has the farmer skinned forty different ways.

MR. HAIG: You mean in this case we are talking about,—

MR. REID: They absolutely know what their earning power is. There isn't a trade union man in New Mexico that doesn't know, or can't compute to a dollar what he will earn next year and the farmer can't tell whether he will have a dollar from his crops next year to meet any taxes.

DR. CRILE: In regard to the objections to the progressive tax. I take it that Mr. Springer will pardon the illustration, that if a coal

company paid a five percent income tax on its profits, that income tax would eventually be born by the man who burns the coal, and the man who burns the coal, if he has already paid his proper tax, has no right to share invisibly in the five percent for the coal company, which he eventually would do. In other words, there is an excuse now that would disappear under my theory and the excuse is that the large operators who pay a progressive tax are indirectly and invisibly distributing the tax back to the men, many of whom ought not to pay taxes but are reached by it.

MR. VAN HOUTEN: You assume that the coal company sells coal to the same men that pay taxes in New Mexico?

DR. CRILE: Yes.

MR. VAN HOUTEN: The fact of the matter is a lot of the coal is sold outside of New Mexico.

DR. CRILE: That is true, but so far as it touches the people here is the point I have in mind.

MR. HAIG: Would you say that the whole of that five percent tax charged on the coal company was shifted, or only the difference between the five percent it pays and the two percent you pay?

DR. CRILE: I rather think most of the five.

MR. HAIG: Do you think if he paid two and you paid two he would shift the two?

DR. CRILE: Yes, but it wouldn't be so much when it came down.

MR. HAIG: You think an income tax on any business concern would be shifted then?

DR. CRILE: Certain sorts of concerns. Concerns such as produce materials of consumption, and it all goes back.

MR. SPRINGER: What about margins?

THE MARGINS TAKES IT RIGHT BACK AND WE HELP PAY THE MARGIN. A man who deals in commodities and distributes them in the community taxes them right back to the community. I would rather invisibly share in one percent of that distribution than to share in five percent and I would rather pay one and he one.

MR. HAGERMAN: Mr. Sully, may we hear from you on this matter?

MR. SULLY: I didn't come here with any views about the income tax, only in a general way. There are workmen in this state, and citizens, as well as in other states, who don't come in and help pay our expenses of schools or expenses of their own protection and education of their children. Most of these people,—these people on the payrolls,—the Santa Fe payroll is $5,000,000. Other companies pay seven and a half million dollars more in this state and except such as pay something to the United States on the income tax law, those people, many of them, pay nothing except you catch them somewhere and take that special road tax of $3 a year from them. A good many of those men I know are willing and glad to pay some share for the advantages they have. It is my belief that every man takes more

interest in anything that is going on if he makes a slight contribution himself. Something that is given to him comes freely and he despises and in this tax matter, if some way can be devised within reason so that every inhabitant citizen of the State of New Mexico who makes a living here can make a small contribution we will be getting down to a principle that should be established.

MR. HAGERMAN: Are there any other of the gentlemen here present who would like to be heard on this particular subject of the income tax?

MR. HAYDON: We have with us a gentleman from St. Louis, Mr. Harlan, who I think has given the matter of the income tax some consideration and possibly he might have something of interest to say to us.

MR. HAGERMAN: Mr. Harlan, you were with us this morning and afternoon and if you would favor us with any views on this matter we would be very glad.

MR. HARLAN: I can't pose as an expert on this subject, by any means. Necessarily I meet with a good many angles of it. Fundamentally the income tax is correct and so far as I know no good citizen objects to it. It doesn't make any difference whether a wage-earner or anybody else, or how he gets his money in a legitimate way, he is willing to pay an income tax. Now it must not be burdensome. The first income tax imposed in the State of Missouri, as I remember, was one-half of one percent and everybody paid it and paid it gladly. the necessity of. providing a sufficient revenue for the State They realized the necessity of providing a sufficient revenue for the State; that that was an equitable method of levying taxes, that it was a fair distribution of the tax burden, to a limited extent, and it is met graciously. That is my exerience and it is a very fair means of raising revenue.

The legal questions involved have been pretty well settled in the test cases on the Missouri law which went to the Supreme Court of Missouri first and where the constitutionality of that law was sustained. The constitutional provision of Missouri is not as liberal as the constitutional provision of New Mexico, in this; that under our Missouri constitution the tax must be equal and uniform. Your New Mexico constitution provides that it must be equal and uniform on the same subjects taxed. That is a little more liberal than our law. That opinion of the Supreme Court of Missouri was sustained by the United States Supreme Court and I think in those two cases that you will find all the constitutional questions, fundamental questions I have referred to, settled.

MR. HAGERMAN: Just briefly, what was the subject in controversy in the case that was taken up?

MR. HARLAN: Well, I don't remember those cases well enough to quote them, but you can depend upon it that every question that could be urged against the constitutionality of that law was presented to the court, to both of those courts, because the case was fought for the purpose of determining whether or not such a law could stand. The last act of the Legislature, which was an amendment of the first act, increased the taxes and by some peculiar wording imposes, according to the recent decision of our Supreme Court, a burden upon the

taxpayer that the Legislature evidently didn't intend and there has been considerable agitation in our State to call an extra session of the Legislature to amend the present law, but that only for the purpose of correcting the objectional features. The income tax is easy of ascertainment and I quite agree with the sentiment that has been expressed here, that every good citizen wants to pay taxes. I believe that a man has a greater appreciation of his government and of his right of citizenship if he does pay a tax, and it is a peculiarity of human nature that something that a person ought to pay for that he gets for nothing he has a contempt for. From my observation and such limited experience as I have I believe that the income tax is a sound method of raising revenue . That is my candid judgment on it.

MR. HAGERMAN: It has been a pretty satisfactory tax, both in method and as to result, in Missouri?

MR. HARLAN: Yes, as far as the administration is concerned it isn't burdensome. In the city of St. Louis the same officer that collects the general taxes collects the income taxes. Our returns are made out and sent to him. The amount of the tax is estimated on the return and so far we have not had any trouble about it, very little fuss about it, except, of course, under this recent law, which was found more burdensome than was evidently intended, and which will be corrected.

MR. HAYDON: From your knowledge of the provision of the Missouri constitution and what you have seen or heard read here of the provision of our New Mexico Constitution, are you of the opinion, Mr. Harlan, that we could safely pass an income tax law at this time which would be considered safe?

MR. HARLAN: I am, yes, sir.

MR. HAGERMAN:—That is to say a graduated income tax?

MR. HARLAN: Yes, I would apply that to a graduated income tax. The principle of graduating an income tax is no different from that of graduating an inheritance tax and under your constitution, which requires that the tax shall be equal and uniform upon the subjects taxed, equal and uniform in that sense means nothing more or less than persons similarly circumstanced and that is exactly what it means, and the graduated tax on estates, so-called death dues, has been sustained twice by the Supreme Court of the United States. One of those cases went up from the State of Illinois and the constitutional provisions of Illinois are no broader than yours and that was the first case involving that question. That was sustained by the Supreme Court of the United States. The question came again before the Supreme Court of the United States in the famous case of Molton vs. Moore and involved the construction of the inheritance tax under the federal law and in one of the ablest opinions probably ever delivered by our Supreme Court that subject of graduation of the tax according to the amount of money involved was thoroughly considered, and that is the law of the land. Now the principle is just the same, whether it be an income tax or an inheritance tax and one who gets $20,000 a year is in one class and one who gets $5,000 a year is in a different class.

MR. SPRINGER: Mr. Chairman, the objection here was that the inheritance tax was not considered a tax upon property, but merely a tax upon the right of succession, upon the transfer of the property,

whereas the tax upon incomes was a tax upon property and therefore under our constitution it must be at a uniform rate upon all property. That was the objection here.

MR. HARLAN: But that, Mr. Springer, you can see would make no difference so far as the determination of the classification is concerned. Those whose income is $20,000 a year can be classed separately, also those that have an income of $5,000 a year, and they are similarly circumstanced and meet your constitutional provision.

MR. CRILE: I would like to make one further short statement. I take it that the cattle in the state are about as numerous on the ranches and are worth about as much as we can reasonably anticipate they are going to be; the sheep are not worth what they were and may not be again worth what they were. The value per head of sheep and cattle is at its peak. You can't seek more revenue there. The lands on which there never has rain fallen we have no reason to expect it will fall. There is no outlook for increase there. The railroads we always have with us and they seem to have reached far into them. The only thing left to produce more money on in the state is extension, if possible, and as far as possible, of farm production, or of manufacture. Those are not rapid and can not be rapid and these things which have reached, in most instances, their peak, will have to bear additional burdens of government over what they now do unless this "twilight zone" comes in. That is another argument to my notion for them to contribute, because of the condition of our state, of its size and of its fixed nonproductivity. We can't expect further incomes from many of these directions that people can in other states and we are not similar to them in that regard at all. I will state a prophesy; that in 25 years from now there will be very few more cattle and more sheep in New Mexico than there are today. And so, with the increased cost of government and the necessary increased cost of maintenance of government you haven't got a corresponding future increase in our taxable assets. Therefore it is more necessary that those who now bear the expenses should not be further burdened until those who bear no burdens shall share with us. That is a further statement I wished to make as regards my urging the extension and nonexemption of revenue production and taxpaying in New Mexico.

MR. HAGERMAN: Mr. Turner, what do you think the prospects are of additional railroad building in this state during the next twenty-five years?

MR. TURNER: Twenty-five years is a long time to consider, but so far as we can see now, either from capital or from labor or any other source,—it is practically impossible to build a line—I can't conceive of any project anywhere that would have any encouragement whatever.

MR. HAGERMAN: Of course we realize that the present conditions are abnormal, probably, in connection with the railroad building. Supposing that conditions do come back to normal, do you see much prospect of future development in the way of railroad building in the next five or ten years ?

MR. TURNER: No, sir, I don't see any prospect whatever. There may be a few cases where companies and communities will be under obligation, mutual obligation, they may complete some project they plan, but it will not be on a commercial basis, it will be simply as ar

obligation. The Santa Fe Company has obligated to build two or three small extensions. Now they may, if they can see their way clear, complete their obligations, but it won't be any investment.

MR. HAGERMAN: I think while that is a purely speculative question it is one that bears very directly on the whole subject of taxation and revenue. Mr. Van Houten, what is your view as to the future of railroad construction in New Mexico?

MR. VAN HOUTEN: I don't know anything about it, but as a rule, Mr. Chairman, I know that in our line of business the building, extension and operation of coal mines are largely governed by the market, and the market will have to develop faster than it has in the state to warrant further extension.

I would like to ask a question, Mr. Chairman, about the collection of the tax. Necessarily the income tax will be in small amounts, $1, $10, $15. I understand we have a flat tax in the State now of $3 a head for the maintenance of the highways. I would like to ask Mr. Joerns whether he is familiar with the collection of the tax and the willingness of the people to pay it?

MR. JOERNS: No, I am not. I don't know just what the amount collected is, but as to the willingness, I don't think people are very willing to pay it. It is very difficult to collect that.

MR. VAN HOUTEN: Aren't you going to meet the same difficulty in collecting a small income tax?

MR. JOERNS: I don't think so.

MR. VAN HOUTEN: Take it under the federal regulations the employer of labor has to furnish a list to the government of the amounts paid to the laborer and in that way the Federal Government, to a certain extent, gets a line upon the people that are subject to the income tax,—the wage earner. I presume it would be the same proposition in the State income tax. I was wondering how you were going to collect all these small amounts?

MR. JOERNS: I think those payments would be more readily made than the present road tax.

MR. VAN HOUTEN: Why would they pay that, Mr. Joerns, any more readily than the $3 road tax?

MR. JOERNS: Because the $3 road tax is not uniformly collected. It is collected more or less from those people who will pay readily and the man who dislikes to pay will get out of it.

MR. VAN HOUTEN: The same man who has to pay the $3 tax will have to pay the $5 and $10 tax, largely?

MR. JOERNS: That is probably true, but I believe nevertheless that a tax of that kind will be more readily paid than the present poll tax or road tax. We have too many exemptions. For instance, in the road tax firemen, doctors, lawyers and ex-soldiers are exempt from the tax.

MR. SIMMS: Isn't it supposed that the average amount of tax paid each year by every taxpayer in New Mexico is in round numbers

not over $15 a year? At any rate the average per capita is not over $25 per year?

MR. ASPLUND: About nine million dollars a year taxes levied.

MR. SPRINGER: How many taxpayers do you reckon there are in the State?

MR. ASPLUND: I imagine it would average 2,500 names to the county.

MR. CRILE: The matter of collecting the income tax, if such a law should be made, I think should be under the supervision of the State Tax Commission and collected in each county under their supervision and I would dismiss the Assessors and a lot of those jobs down the line and let the Tax Commission handle it.

MR. HAGERMAN: Prof. Haig, what is your experience or knowledge of the cost of the income tax where there are small communities in other states, a comparatively overhead cost as compared with the collection by the Federal Government for instance, or do you know about that?

MR. HAIG: The cost has increased very rapidly in proportion to the revenue received and so far as I know there has never been any very successful administration of any flat tax on a per head basis. It is very difficult.

MR. HAYDEN: I want to ask Prof. Haig a question. In a country such as we have here, where a large percent, it used to be anywhere from 40 to 50 percent, of the taxes was not paid, remained delinquent on the tax rolls, (that percent in some of these counties won't run quite that but it is a very large percent, largely among these small taxpayers who would have to pay this $5 or $10 or $15 tax) if you can't collect it from the taxpayers who have some property that is tangible that you can get hold of and enforce execution against, do you think it would be possible to enforce a tax against that individual?

MR. HAIG: That certainly would be very discouraging. Would you, Dr. Crile, anticipate great difficulty in collecting this income tax?

DR. CRILE: No, sir. I want it understood, however, that there should be a different organization for collectnig the tax than we now have. The Tax Commission should run the business of raising revenues and checking up revenues and seeing that the revenues are paid. That is their business.

MR. HAIG: In British Columbia they had absolute centralization and even that didn't solve the problem.

DR. CRILE: Going back from that, to use this illustration. Suppose the Tax Commission had someone that had authority to exercise its rights in the collection of taxes. Here is a man who is delinquent on his taxes with a little farm. Here is another man delinquent on his taxes who gets $250 salary a month. Should not the State of New Mexico have a right to either levy against the man's farm or against the salary of $250 a month? The $250 payroll is a mighty sight easier gotten at than the farm. Delinquent taxpayers in our State have had an easy time of it. The fear of God has never touched them but a little bit of that would do away with that.

MR. VAN HOUTEN: How are you going to reach the plumber, the carpenter and the brick mason?

DR. CRILE: If he is not on a payroll he likely has a partner or a contractor with assets. If a man works for me and gets a thousand dollars a year on my farm he is on my farm and it is the easiest thing in the world to reach him. If somebody has the authority and has justice and integrity enough to go out and reach him there is nobody easier in the world to reach than the man on the payroll.

MR. VAN HOUTEN: Don't you think that the man or corporation that earns the larger amount of money or makes larger profits is more of a burden on the State and should pay the State more in proportion than the individual who has a small income?

DR. CRILE: I don't feel so, because they are cooperative. I think, Mr. Van Houten, he is a benefit to the State by development and by production, by consumption through his employees it is mutual.

MR. VAN HOUTEN: That is true, at the same time he gets more protection too, doesn't he?

DR. CRILE: The difference is this. We may have to call out the militia to protect a large interest, but we have to constantly call out the constable and sheriff to protect the little fellow and don't notice it. The aggregate to the sheriff and constable on the farm and small man may amount to as much as the aggregate of the militia on the large man, I don't know. The matter that has occurred to me repeatedly is this. You see a citizen of this state in a house he didn't build and doesn't own, without a garden or a chicken, without paying anybody. If he is out of work he has a benefit. If he is sick he has a benefit. If his children want to go to school they go. If he wants police protection he calls and gets it. We haven't attached that man to this country. This income tax would attach him and it is the only attachment we have got for him and I don't believe for a moment, in regard to industries of any sort, production industries under any classification you may name, but what the benefits are purely cooperative in that community and society as against what they may have from it. The only time that such industries become undesirable is when they extract beyond business methods, which is plain dishonesty and is subject to a different regulation altogether. But industries must be here and must be protected. I never felt, Mr. Van Houten, for a moment that a militia or guard or any other thing necessary to protect a railroad or a mine or a big cow ranch was anything at all of a burden against the society of New Mexico. We are only holding intact to them what I expect New Mexico to hold intact on my little farm. It takes less of administration on my farm, but the principle is the same.

At this time an adjournment was taken until 9:30 A. M., Tuesday, August 17, 1920.

## TUESDAY MORNING SESSION, AUGUST 17, 1920

The meeting was called to order by the Chairman at 9:30 o'clock. All members of the Commission were present.

Chairman Hagerman opened the session with the following statement:

"The matter of delinquent taxes is one of the most difficult we have to deal with. The records of the State Tax Commission show that there is at present about $2,500,000 of delinquent taxes outstanding, and that on the whole the state collects not more than 90 per cent of the taxes. This places a burden on the taxpayers that do pay their taxes which is entirely out of proportion and unequitable. Of course there are a great many people who cannot pay their taxes promptly, but the main offenders in the matter of delinquent taxes are, in my opinion, some of the larger taxpayers who regularly for years have systematically refrained from paying taxes on their property, with the idea of subsequently compromising them with the county commissioners, and that sort of thing has in many parts of the state become a practice. A good many efforts have been made to correct this fault and bills have been introduced into the legislature for an adequate administration of the tax laws in this respect, but none so far have been finally passed.

Mr. Easterwood of Clayton has perhaps more than any other one man in the state tried to adjust this bill, and we have asked him to appear before the Commission to tell us what he knows of the history of delinquent taxes in the state, and the efforts made to pass adequate laws to remedy it."

MR. EASTERWOOD: Mr. Chairman, and members of the Commision: I am not conversant with condition over the state, but in Union county, where I live, I will say that there has not been a tax sale for any year since the year 1913; owing to the condition of the tax laws there have not been, I should say, half a dozen certificates sold in any year since the year 1909; that there has not been a case in court in our district that I know of where any tax title has been sustained on sale made since 1900, and that the general impression and opinion among the attorneys so far as I know is that it is practically impossible to sustain a tax title, and this impression seems to be generally understood by the taxpayers.

MR. JOERNS: In Union county?

MR. EASTERWOOD: In our part of the country so far as I know. In my opinion the present tax law is entirely inadequate, and I do not believe we have had an adequate tax law since the repeal of the 1899 law, which I believe was a good law, and this law has been construed by the courts, and if we could get back the 1899 law, or the salient features in that law, I believe the state would have an adequate law. The 1899 law was amended to some extent in 1901 and absolutely abolished in 1913. The 1913 law left certain portions of the 1897 law in effect, but these provisions were repealed by the codification of 1915, and certain amendments to the tax law were then made. In 1917 a different tax law was passed, and that is practically the tax law today. This 1917 law, in my opinion is not an adequate law for the reason that the old statute of Section 4101 of the 1897 Compiled law was repealed in 1915 by the codification. This section of the 1897 law made the tax deed prima facia evidence of the legality

of the proceedure, setting out nine different provisions that the tax deed would establish in evidence. When this section was repealed by the 1915 code, it is the general opinion of attorneys, and has been the holdings of at least one or two of the courts where the matter has come up, that under the present laws the tax procedure must be established according to the common law practice; that is, in order to sustain the tax title it is now necessary to prove the making of the tax levy, the assessment of the property, the delinquency of the taxes, the notice of the sale, the sale of the property, the issuance of the various instruments necessary in the proceedure, and owing to the fact that public officials rarely, if ever, themselves keep these records, it is a physical impossibility to produce the evidence. So that in my opinion this section 4101 of the laws of 1897 should be restored.

Now the 1899 law carried a very effective curative provision. This is section 25 of Chapter 22 of the laws of 1899. In all subsequent laws this provision which is really the most effective provision in the tax legislation has been entirely left out. This provision provides substantially, that the tax sale shall not be void or set aside on account of errors or irregularities in various matters, and principally provides that no bill or review of action, attacking the title to any property sold, shall be entertained in any court, nor shall any such sale or title be invalid except upon the ground that the taxes have been paid before the sale, or that the property was not subject to taxation.

Now the 1917 law, or the framers of that law, probably intended to carry that provision into the law, and they probably thought that by putting in the provision that any final judgment for the sale of such real estate shall estoppe all parties from raising any objection thereto, or to the tax title based thereon, which existed at or before the rendition of the judgment which could have been presented as a defense in the action; that the judgment should be conclusive evidence of its regularity and validity in all central proceedings, etc., but that section of the statute in my opinion is not at all sufficient as a curative provision, and a judgment I believe in the absence of this provision in the statute would have the same force and effect as this provision gives; so that it seems to me that we practically today have no curative provision in the tax law, and I do not believe that any tax law will be effective without a curative provision,because of the manner in which the records are kept and the irregularities made by the taxing officers would invalidate a sale in the absence of a curative provision, and this omission from the law coupled with the fact that under the present law the common law proceedure must be resorted to and the various steps of the procedure must be established by the records, which probably are not kept, that under these conditions it is impossible, at least in our part of the country, and I apprehend in most counties of the state, to sustain a tax sale.

In order to collect these delinquent taxes, it seems to me that the tax law would have to mean something, because that is the inducement to people to pay their taxes; and if they understand as they seem to now, that a tax title does not amount to anything, that offers really no inducement to pay taxes.

There is quite a diversified opinion among attorneys as to what a tax law should be. I have personally never favored a resort to the courts. It seems to me that the procedure could be much simpler and more effective in the office of the treasurer. I cannot see where a court proceeding adds anything to the efficiency of the pro-

cedure, but there seems to be a general opinion that these matters should be carried throught the courts, and the present law of 1917 as supplemented by the 1919 law provides for the procedure through the courts. It has been my experience that proceeding through the court to collect taxes is a mere matter of form, and that the only effect it has is to delay and encumber collection of taxes. It is true that the act provides for a suit and for personal service to be made on the delinquent taxpayer, but this is rarely done. Procedure usually is a blanket suit by publication and I cannot see where there is any difference in that kind of notice than from notice given by the treasurer. Attorneys are naturaly inclined in matters of this kind to be dilatory and some of our courts are constituted along the same lines, and the result is that when you resort to the courts the collection is not necessarily delayed. It usually takes from twelve months to two years to complete this procedure where resort is had to the court; whereas, if the treasurer is authorized by law to make the sale the whole procedure would be completed within two or three months. These are the principle defects, as I see them in the law as it stands today. If the people want to proceed through the courts my opinion is that the present law can be amended in such a way as to be satisfactory by the restoration of Sec. 4101 laws of 1897 (compiled) and by the restoration of Sec. 25 Chapter 22 laws of 1899. I believe that these two sections added to the present law would give us a fairly good delinquent tax law. There are other provisions that should be included, but the chances are if much is undertaken the legislature would not pass anything that would be effective. It might be more satisfactory under the 1919 law, which authorizes the tax commission to employ special counsel to collect these taxes, if that procedure were improved on by the employment of special attorneys in each county instead of each district. I do not know that that would be any better, but it certainly is not working out very satisfactorily in our county at least under the present procedure. We have not had a tax sale since 1913, and as far as I know there is no probability that we will have a tax sale.

MR. HAGERMAN: Your opinion is that the provision in the 1919 law providing for special counsel in each district has not added greatly to the effectiveness of the situation?

MR. EASTERWOOD: That is my opinion; I think it merely encumbers procedure and makes it harder to make the collection and certainly delays collection of taxes.

MR. HAGERMAN: Did you present to the last legislature a law on the lines that you now suggest?

MR. EASTERWOOD: Yes, I prepared and presented a measure primarily intended to relieve the situation in our county, and that measure did not provide for any procedure through the courts.

MR. HAGERMAN: What was the fate of that measure in the legislature?

MR. EASTERWOOD: My understanding is that it passed in the senate, but in the last days of the legislature failed to pass in the house, and that the other law which passed had to be passed or no tax law could be passed owing to the congested conditions at the close of the legislature.

MR. HAGERMAN: Do you not think that a majority of the legislators are impressed with the real necessity of a workable tax law, which will result in collecting delinquent taxes, and if so why could not such a law be put through?

MR. EASTERWOOD: There are certain people and certain interests in the state opposed to any delinquent tax law, constitutionally opposed to any payment of taxes; therefore opposed to any law that would compel payment of taxes; in the next place, there is always a friction and controversy on the part of the newspapers, or at least some of the publishers, over the publication feature of the law. Newspapers naturally want to publish as much as they can and it is almost necessary to have to publish a lot of unnecessary information in these tax laws in order to keep down the active opposition of the newspapers.

MR. HAGERMAN: When you referred a moment ago to certain interests, did you have in mind the newspapers as one of the principal interests?

MR. EASTERWOOD: No, the only opposition on the part of the newspapers relates to the amount of publication necessary in the procedure. As a matter of law, it probably is not necessary to publish anything at all, though I believe notice should be published; an adequate notice should be given the property owners that their property will be sold and notice of the proposed tax sale.

MR. HAGERMAN: It is known generally that many of the larger interests in the state, such as the railroads and mines, do pay their taxes and pay them promptly; whatever the suggestion may be in regard to the amount they pay is another question, and it is certainly true that the prevailing delinquency on other property, make them pay more than their share. What interests do you think are constitutionally opposed to a delinquent tax law?

MR. EASTERWOOD: I have understood some of the land grant owners are the principal ones opposed to the passage of such a law.

MR. HAGERMAN: Have you reason to believe that the large owners of grants have actually opposed legislation on delinquent taxes?

MR. EASTERWOOD: That is what I have been reliably informed, but have no personal knowledge of that fact.

PROF. HAIG: As I understand it, if a person does not pay his taxes, the present procedure is to take action against him in the court?

MR. EASTERWOOD: No sale takes place until after judgment is given by the court, and advertisement following the judgment.

PROF. HAIG: And as a matter of fact that action is not taken?

MR. EASTERWOOD: I understand it is being done in some parts of the state; it is not done promptly in our county; I do not know about the other counties. In our county we have a very complicated condition; we have what is called the county auditor and the county treasurer and there seems to have arisen a conflict as to who should do this work, and who should furnish and apply the information. I do not understand the merits of the controversy, but at any rate no action is taken.

PROF. HAIG: Is interest charged?

MR. EASTERWOOD: 12 per cent. Under the 1899 law the interest was 18 per cent.

PROF. HAIG: Are the costs of the action charged against the property?

MR. EASTERWOOD: Yes.

PROF. HAIG: Are they so high as to make redemption prohibitive?

MR. EASTERWOOD: Merely nominal, unless process is served personally by the sheriff. The principal costs are the publication charges, and five per cent added for the attorney, and five per cent court costs; 10. per cent for the attorney of the county including costs.

PROF. HAIG: Do you feel that there is a general sentiment that prevents prompt collection of those taxes?

MR. EASTERWOOD: That seems to be the case.

PROF. HAIG: In view of that sentiment which is against separating a man from his property, would any kind of law passed bring about improvement?

MR. EASTERWOOD: An effective tax law. There is no inducement now to pay taxes so long as it is believed that no valid sale can be made of the property.

PROF. HAIG: If you had a more effective procedure do you think sentiment would back up an effective administration policy?

MR. EASTERWOOD: I don't know about the sentiment. The people will not pay taxes so long as they think there is no probability of losing their property, and so long as they think no valid tax sale can be made and the legislature passes no effective law.

PROF. HAIG: I suppose the hope of compromise enters? And what is the legal basis for the practice of compromising?

MR. EASTERWOOD: Formerly we had a statute permitting county commissioners to make settlement on back taxes, but that was abolished and we have no statute now that authorizes anything.

PROF. HAIG: No provision prohibiting it specifically?

MR. EASTERWOOD: I think there is. The only relief now is through proceedings in the district court.

PROF. HAIG: Do you think it desirable to include a specific provision in the law forbidding compromises?

MR. EASTERWOOD: We have that provision.

PROF. HAIG: Compromises are illegal?

MR. EASTERWOOD: I do not know of any compromises now, but I do know that the law permits relief through the courts.

MR. HAYDON: In your experience has the publication of de-

linquent tax notices been successful in bringing in enough returns to pay the expense of that publication?

MR. EASTERWOOD: I think so.

MR. ASPLUND: I have found only one county in the half a dozen I have recently visited where the amount taken in from the delinquent taxpayer covered the cost of publication. I have in mind one county where the publication cost $1100.00 and not to exceed $100 was collected from the delinquent taxpayers; whereby those who paid taxes paid the extra charge of $1000. I think that condition prevails in a great many counties.

MR. HAYDON: In San Miguel I think it runs from $5000 to $6000 a year to publish the delinquent tax list, and I doubt if $1000 is collected of delinquent taxes. Last year it was a little better.

MR. EASTERWOOD: These delinquent lists of course could be published for probably one-tenth of what they now cost if a lot of the unnecessary matter were eliminated.

MR. JOERNS: What is unnecessary in the present publication law?

MR. EASTERWOOD: I don't know. There has been so many different laws. It seems to me that all that would be necessary would be a general notice to the taxpayers, notifying the different people delinquent and the amount of the delinquency and that their property would be sold. Every man knows what property he owns, and I do not see the necessity of going into a detailed description; if that were eliminated it would probably cut down the cost two-thirds.

MR. HAGERMAN; To what extent, in your opinion, is an improper assessment responsible for the high percentage of delinquency?

MR. EASTERWOOD: There are a great many instances where that does cause delinquency, but usually I do not think that has so much bearing on it, because where the assessment is not sufficient, a man who wants to pay his taxes will go in and have his assessment corrected, and the fellow who does not want to pay, wont pay anyway in the absence of an effective law.

MR. ASPLUND: In some of our counties where the assessor does not follow the practice of personally viewing the property or even visiting the neighborhood, the schedules are copied from one year to another, very often placing upon the tax rolls property removed from the state, or duplication of assessment. Of course that would affect the per centage of collection and make the delinquency uncollectable. I think in some counties that will account for a good deal of the per centage of delinquency.

MR. EASTERWOOD: The only relief in that case is to get another assessor, one who is qualified and who will discharge the duties of his office.

MR. HAYDON: I suppose in Union county you could not get that kind of a man.

MR. EASTERWOOD: It seems to me that if some provision were added to the law where the assessors failed to carry out their duties, whereby they could not collect their salary, or provide some penalty,

or make them subject to removal from office, might have a desirable effect.

MR. HAGERMAN: Is there any provision of that kind in the law you have prepared?

MR. EASTERWOOD: No, I endeavored in that law not to antagonize anyone more than was possible; the less friction suggested in the law the better the chance for its passage.

MR. HAGERMAN: Mr. Springer, what do you think is the main opposition to contend with in getting a satisfactory law through the legislature at this time?

MR. SPRINGER: I think it is the fear that too drastic a law will be passed for the collection of delinquent taxes from owners of small homes and farms, who think they may lose their property through the purchase of tax certificates by those whom they call "tax sharks", people who purchase tax titles. That is one reason: and many people fail to pay their taxes, on account of failure of crops; and the fear on the part of the legislators have been that some of their constituents would be ruined in that way, and lose their homes and property; because many of them do not read the newspapers, and do not go to the county seat often and would be deprived of their property without really knowing it was being sold. That has been the reason why many legislators have voted against a drastic delinquent tax law. At the last session of the legislature there were some statements made similiar to that of Mr. Easterwood, that the principal objection to an effective delinquent tax law was on the part of the owners of some of the large land grants on which delinquent taxes for many years past were due. It so happened that I was requested to prepare a provision that would result in the immediate collection of delinquent taxes. I was requested to do the same thing in 1897. A provision which I believe would result in the immediate collection of taxes, was that when the property was advertised and sold for taxes and no person appeared who would bid in the property and pay the tax, it should be sold to the county or the state, as the case may be, and that after due notice to the owner he would be deprived of possession of his property and his title pass to the purchaser; but instead of having a long period of redemption, it would be a short period and the state would take over the property and could lease or sell it as other state lands. The man would not be deprived of his property without notice; the law would provide that before a sale was made the owner would be personally notified, in addition to other notices given; he would be personally notified that his property had been sold and that the new owner would on a certain date appear and demand possession, and that any time before that date he could pay the taxes and costs. Now that appeared to be an absolutely sure method of collecting delinquent taxes, and of course it was not so drastic, and directed against owners of large land grants, but is directed against the smaller holder who might not be able to pay; they could not very well make two laws, one operating drastically against the land grant owner and another one that would be easier upon the small holder, and the result was that that provision was eliminated from the bill.

MR. HAGERMAN: Do you think the present law providing for special counsel to collect taxes a wise one?

MR. SPRINGER: I believe it might result in the collection of all taxes collectable if properly assessed, and if the attorneys would

diligently perform their duties; I believe a tax title under the present law would be good. I do not believe it needs a curative provision. The difficulty about it is that there is no particular inducement for a man who hasn't got the money to pay his taxes. Under present conditions if his tax title is good he will have time to redeem by paying 12 per cent interest and costs, and many take advantage of the present situation to let their taxes go by instead of borrowing money and paying them; they only have to pay 12 per cent interest and so protect themselves.

MR. HAGERMAN: As far as the present law then is concerned much of its ineffectiveness is due to the personnel of the administration?

MR. SPRINGER: To that, and to the comparatively low penalty, and the long period of redemption, which I think is three years. If a law were so drastic as to deprive a man of his property, either give up his property or pay his taxes, he would pay his taxes. This feature of the law I think should be changed.

MR. SAINT: I had prepared last evening from our records the amount of money paid to delinquent tax attorneys. We have nine attorneys in eight judicial districts. In the 1st district, San Juan county being away off to itself, we appointed a separate attorney for that district. This matter was brought to my attention by a complaint from Albuquerque that our attorney was getting rich on his eight per cent. I got Mr. Joerns to make up the record of the amount of money paid each attorney. They get 8 per cent of the 10 per cent penalty attached to delinquent collections, and this eight per cent amounts to $24,880.59 paid to our attorneys; that represents eight per cent of the collections made; and I was particularly interested in the Union county statement, in talking to Mr. Phillips yesterday about the collections in his district. He said he had done nothing in Union county because the treasurer up there would not give him any data and he would have to go through the records himself and get this; also in this statement from Mr. Asplund, regarding counties that do not pay their advertising fees. I am going to read you the districts and the amounts paid to the collector which represents eight per cent, 2 per cent retained by the tax commission for their own expenses in connection with this thing.

In Bernalillo county 2nd district, $2395.14.

MR. JOERNS: What about the work performed by Mr .Venable?

MR. SAINT: He has to make a transcript of the record of all these delinquencies which is a very big job of clerical work; he has devoted a great deal of time to it, and this represents perhaps fifteen months work.

MR. JOERNS: He is one of the most energetic of the attorneys.

MR. SAINT: Yes he is. Mark Thompson represents the third district, that is Dona Ana, Otero, Lincoln and Torrance. We have paid him $4474.09 which represents eight per cent of his collections; in Socorro, the fifth district, Mr. Eaton is another very capable man. I consider him and Mr. Venable the two most industrious men we have. We have paid him $3722.50. Louis Armijo of Las Vegas, is tax attorney for San Miguel, Mora and Guadalupe; we have paid him $3980.40; Clancy represents Santa Fe the first district, with Rio Arriba

county. We have paid him $1153.41. Mr. Woodbury of Grant, Luna and Hidalgo received $1438.86. Mr. Parsons of De Baca county has received $1890.80. To Mr. Phillips of Raton we paid $2717.03. He has done very little in Union county; most of it he tells me comes from Colfax county. Mr. Hervey of Chaves and Eddy counties received $2385.16; Mr. Burdick of San Juan county $693.30 for the one county.

Some of our attorneys have not shown much energy in this work; they seem to have taken the cream and let the balance go. The total we have paid through the tax commission, being 8 per cent is $24,080.69

At this time we undertook to put this law in force the question was whether or not we should hire county attorneys, district attorneys or put the whole thing in the hands of one attorney and appoint his assistants and have him devote his entire time to it. I believe the most efficient way is to appoint one attorney and have him devote his entire time to it. I think we would have got more money. We haven't had many court cases. There is one land grant delinquent $82,000.00; it is a community grant; other grants are in controversy, one grant north of here is in controversy and a suit on for its partition, with $18,000 or $20,000 delinquent taxes. I know that under the new law which provides that the court cannot settle anything in the way of tax suit without giving notice to the owner, this commission does not believe any compromise has been made by the district attorneys.

MR. SIMMS: How does this amount of $300,000 which has been collected compare with the amount collected for delinquent taxes in the same period in preceding years?

MR. SAINT: We have no record in our office of delinquent tax collections, that is, we have the record but no statement has been prepared.

MR. SIMMS: In the working of this law, under which was collected $300,000 in fifteen months, is that worth $25,000 to the state?

MR. SAINT: It did not cost the state anything; it was added to the delinquency.

MR. ASPLUND: The ten per cent is collected and set aside, and the eight per cent paid only from actual collections, not upon judgments secured.

MR. SAINT: The county treasurer gives the state tax commission credit and notifies us what we have.

MR. ASPLUND: And the special counsel is entitled to his ten per cent immediately when the taxes become delinquent.

MR. SAINT: Whenever the tax becomes delinquent it is then a subject for the tax attorney to take hold of.

MR. HAYDON: Before publication?

MR. SAINT: He has to make publication.

MR. JOERNS: Ten per cent attached immediately after publication.

MR. EASTERWOOD: I think Mr. Springer is wrong in thinking the law adequate without a curative provision. I do not think the so-called curative provision in the present law is any curative pro-

vision at all. I think if Mr. Springer reads this law in connection with the old law he will see it is not sufficient.

MR. HAIG: Mr. Saint, I was interested in what you said about the special attorneys taking the cream of these cases. Do you think the policy of compromising would result in a more equitable procedure?

MR. SAINT: I am hardly prepared to say.

MR. HAIG: They are permitted to make selection of cases to push vigorously.

MR. SAINT: They go through the list and say, "There's Smith, he can pay; we will call him and tell him to pay or sue him."

PROF. HAIG: You think a full time man would be better?

MR. SAINT: If we could once get the delinquencies cleaned up, probably fifty per cent of these can never be collected, a great deal of it is personal property of people who have left the state; we have thought of making a list of uncollectable ones and report to the legislature and have it wiped off the rolls; if we could get the delinquency down to a reasonable point we would not need an attorney at all. I think the legislature contemplated the contemporary character of this situation when the law was passed.

MR. HAGERMAN: Gentlemen, we have with us today Major Reid, who is president of the State Farm Bureau, and I am sure we would be very glad to hear from him on the general subject of the assessment of farm lands. He also has been president of the State Tax Commission, and his views will be very valuable to us.

MAJOR REID: Mr. President, Gentlemen of the Commission; There is nothing particular, I think, from an agricultural standpoint to say. In irrigated sections it would be highly desirable to have the lands visited personally by the assessors, and assessed at their relative value rather than at a uniform valuation placed by the county commissioners. The principal remedy desired would be one of administration of our present laws, rather than the creation of new ones. The assessed value of agricultural lands in the state is probably not much in excess of fifty per cent of their selling prices; but in my judgment the seling prices of agricultural lands in New Mexico generally is a rather poor criterion of their true value. I think that in most counties the agricultural lands are paying their proportion of state and county taxes.

PROF. HAIG: Do you think that the farm lands are relatively underassessed as compared with other property in the state? Is other property assessed relatively higher?

MAJOR REID: As to the selling value, there is other property probably assessed higher; as to its earning power, I do not believe there is any.

PROF. HAIG: The law contemplates selling values?

MAJOR REID: I don't know. I believe the courts have agreed on that. It is evidence of the value of a farm similarly located.

MR. HAYDON: Is not the selling value now due largely to inflated values, due to increased prices at the present time?

MAJOR REID: No sir. I do not believe there is a piece of real estate or city residence in Chaves county that is profitable from an investor's standpoint. I do not believe that a man who lives in his own home in Roswell is as well off as he would be if he rented equivalent property at outrageous rent. But there is something about us that makes us want to live in our own homes.

MR. HAYDON: Did you get my question, that the present selling values are due largely to inflated prices recently brought about?

MAJOR REID: As a state-wide proposition, I would say in some of the wheat growing sections, yes. The selling price of irrigated land in the Pecos Valley is less now than ten years ago.

MR. HAYDON: You had a boom in prices ten years ago?

MAJOR REID: There is a great deal of hazard in buying irrigated land. An irrigated farm that sells for $200 an acre is not worth as much as a land grant if the water supply should fail; and we all know that the federal loan board will not loan a nickel on our irrigated lands in the Pecos, but will loan on dry farming land in the dry farming counties.

MR. SIMMS: Is that on account of the uncertainty of the water supply?

MAJOR REID: I don't know. It depends very largely upon the man who farms the irrigated land. It has been illustrated time after time in all irrigated sections; practically 75 per cent of irrigated land farmers go broke.

MR. SAINT: I find that the average assessed value of irrigated lands in Arizona is $109.00, and the average value in New Mexico is about $55.

MAJOR REID: I am not familiar with the situation there, but I understand that the county in which Phoenix is located produced $60,000,000 in cotton this year.

MR. SAINT: And the land is worth $600.00 an acre.

MAJOR REID: If the land is forth $600.00 an acre and the assessment of $109.00, our assessment is in excess of theirs.

PROF. HAIG: You in buying a piece of that land take the risk of being deprived of water into account.

MAJOR REID: Yes, as a business proposition you would, as a matter of fact you don't. If you are figuring it solely from a business standpoint I don't believe there would be a farmer in New Mexico.

PROF. HAIG: Have you any estimate as to what farmers are netting?

MAJOR REID: Their right estimate would be nothing.

PROF. HAIG: They think some future gain probably through increased value?

MAJOR REID: I suppose ninety per cent of our farmers cannot do anything else; many of them take land up as homesteads and are able to live and give their children a fair education.

PROF. HAIG: Have you any data which would enable you to answer this question? In a typical case what percentage of farmers net income is taken by taxes under the present ad valorem arrangement? What would he be asked to give up to local authorities as a result of taxation on capital value?

MAJOR REID: It would be very slight. My taxes amount to about $2 an acre, covering improvements and live stock, and the net income would probably be in the neighborhood of ten per cent in my judgment. We have a special tax considerably greater than the drainage tax.

PROF. HAIG: Including the drainage tax would it be $2 an acre?

MAJOR REID: It would be greater; about $5 on my farm.

PROF. HAIG: This local charge would amount to 25 per cent?

MAJOR REID: Yes.

PROF. HAIG: Is that a typical case?

MAJOR REID: In my section of the country, the Pecos as a whole, there has been in my judgment a great deal more money invested in agriculture than will ever be taken out. The hazard has been extremely great. Artesian wells have been drilled to a depth of a thousand feet, and the water has receded to a point where they could not afford to pump. The farmers are just about breaking even.

PROF. HAIG: You are asked to pay taxes on an investment you may never realize?

MAJOR REID: Never, as an average.

PROF. HAIG: And these values are affected by hazzards you could not control, and it is necessary to pay on this basis?

MAJOR REID: Yes.

PROF. HAIG: What are the hazards?

MAJOR REID: Sub-irrigation was probably the greatest; but will probably be remedied by the drainage; in fact considerable land is being reclaimed and got back into crops; many people unfortunate enough to own such land had to give it up and go. Other hazards are those common to agriculture.

MR. HAGERMAN: As to the hazards you describe in the Pecos Valley, they are present in all other irrigated sections in the state that you know of?

MAJOR REID: I think so. Although I expect that fifty per cent of the irrigation farmers make no effort to produce anything for sale in New Mexico. In the older parts of the state they have an idea of owning a small acreage and producing their living off of that acreage, and they do live off of it.

MR. HAGERMAN: As far as hazards are concerned, in the Rio Grande Valley experience has shown that in all probability the vast extent of the irrigable land in that valley will have to submit to tremendous expense in order to preserve present productivity?

MAJOR REID: Yes sir. In that connection I may say that Carlsbad lands and Elephant Butte lands are subject to enormous

construction charge for money advanced by the federal government, and which for purposes of cotton and alfalfa, they will never in the world be able to pay.

MR. HAGERMAN: In other words, these best farm lands in the state in the Pecos and Rio Grande Valley, are subjected first to large irrigation charges, then large drainage charges, and then the regular tax burden that all other property is submitted to?

MAJOR REID: Yes sir.

MR. HAGERMAN: In addition to that, how many other hazards are connected with farming?

MAJOR REID: There is not as many probably as in other industries, for instance livestock.

MR. HAGERMAN: How about hazards connected with dry farming? Such as in Curry county.

MAJOR REID: Hazards up there are such that over a period of seven years the farmer would probably be able to live, on account of drouth. The experience has been that it goes in cycles; that he would probably have three very good years in seven.

MR. HAGERMAN: Is it your experience that this cycle of seven years, three good and four bad, has that proven to be the case in New Mexico?

MAJOR REID: I think so. Half the people will be starved out and leave the state; the other half cannot leave, and they will have a year that equals Iowa in production and forget there ever was a drouth in New Mexico. As far as agricultural interests in Chaves county are concerned, I believe there would have been more wealth in Chaves county, deducting losses, if it had been left a cattle range than by agriculture with its enormous losses.

MR. HAGERMAN: What about the hazards in connection with the stock business in this state?

MAJOR REID: The recent great loss we all have knowledge of. To illustrate, in my own case in 1918, in the spring after two years of drouth I purchased 120 head of two year old heifers, in the hopes it would rain. It did not rain. I kept them on the farm and fed them $20 alfalfa for a year. The next year following it rained. I had a five per cent calf crop and paid $85 a month to have these cattle looked after on the range. This year, the third year, I will have about 80 per cent calf crop with the present outlook for $20 calves. Very few people in eastern New Mexico who had all their capital invested in livestock have not gone bankrupt.

PROF. HAIG: And they were asked to contribute on values they did not realize?

MAJOR REID: Yes sir. The cattle interests think that they have a right to ask that the date of their assessment be changed from the first of January to a later date, for the reason that all of their losses occur after the date of assessment; the mortality occurs after the date of assessment, and they want their stuff assessed the first of May.

MR. HAYDON: I think that would be fair. Have the cattle men and stock industries in the Pecos Valley made anything during the last two or three years?

MAJOR REID: Sheep men have until this year; they have not recuperated however; not as well off as four years ago.

MR. HAYDON: I do not believe the cattle men in the northern part of the state have made any money lately.

MAJOR REID: Cattlemen rarely make money over a period of years. Sheepmen do as a rule make money over a period of years.

MR. HAIG: You were at one time President of the State Tax Commission?

MAJOR REID: Yes sir.

PROF. HAIG: And you know how the present system operates?

MAJOR REID: Yes sir.

PROF. REID: I would like very much to have you tell us what should be done in the way of administration.

MAJOR REID: Repeal the present tax administration laws, abolish the office of county assessors, and charge the State Tax Commission with the duty of assessing all property; delegate them sufficient legislative powers to make such rules and regulations as may be necessary to carry out and produce a proper assessment. In other words, model the scheme after the selective service law.

PROF. HAIG: Do you think the present system ineffectual?

MAJOR REID: Ineffectual and inefficient on the part of the county officers.

PROF. HAIG: Do you think in this state it would be practical to work out a centralized assessment?

MAJOR REID: I think so.

PROF. HAIG: Do you think public sentiment would back it up?

MAJOR REID: I am quite satisfied that 90 per cent of the tax payers would.

PROF. HAIG: Do you think much could be hoped for if it were deemed advisable to strengthen the tax commission, by giving them additional field men and additional authority?

MAJOR REID: It would be impossible.

MR. HAYDON: In 1919 the expenses of the state government were $935,000; last year they were $4,000,000; aside from the general expense of state government, has there been anything gained by that additional expense?

MAJOR REID: That comes largely from increased costs of schools and roads.

MR. HAYDON: Could not the revenue of the state be increased by a reduction in the expense better than in any other way?

MAJOR REID: That has always been my theory. I think along that line that the tax commission should also be a part of the budget committee; it is intolerable that one body should be charged with the duty of raising all the funds, that another body deems convenient or necessary or desirable to distribute without considering the ability

of the state to pay it. I believe that a member of the tax commission, or his agent, should visit every state institution, and be able to make recommendations as to its requirements. Every state institution should fill out its budget and state its requirements three months in advance and make it a public record for everyone to see. Under the present plan we have a budget committee; all come into office the first day of January, ignorant of the condition in the state. Every institution and every board imagines the welfare of the state depends on them, and they have no knowledge of the needs of the state in general.

PROF. HAIG: Do you think there would be any material improvement in the assessment situation if a long term local assessor were secured; would a six year term be better than a two year term?

MAJOR REID: No sir; the average county oficer, it has been my observation, is incompetent and inefficient and indifferent to his duties. I would empower the tax commission to employ and discharge assessors if incompetent. In the recent selective service Washington recommended three county officers be included in the board in each county; we had to make changes on account of their incompetency.

MR. HAGERMAN: What was your position during the war?

MAJOR REID: Executive officer of the selective service. I know that there is no effort made at the present time to get property on the tax roll; Bill Smith may have ten times as many cows as I have, though it does not appear in assessment.

PROF. HAIG: How do you explain that?

MAJOR REID: Possibly friendship or political influence.

PROF. HAIG: Do the local assessors themselves do the work?

MAJOR REID: In our county the assessor was not in the state.

MR. HAYDON: In Mora he did stay in the county but that was all.

MAJOR REID: A deputy takes care of what comes in or copies last year's returns.

MR. SAINT: The tax commission sends out a field man who goes to a county and investigates the assessment and recommends a raise; the assessor puts it on the roll; the county commissioners meet and take it off, and the court sustains the county commissioners in most cases.

MR. HAGERMAN: From your observation, Major Reid, of the county government of the state, taking into consideration the commissioners, treasurers and assessors the state over, and of course we know there are some very excellent officers in some counties, what percentage in the state do you think are efficient and competent?

MAJOR REID: I do not believe over fifty per cent are competent.

MR. HAGERMAN: How many in addition to these are indifferent?

MAJOR REID: It would be about 75 per cent in all.

PROF. HAIG: You think you have material perhaps in deputies out of which a good force of officers could be selected?

MAJOR REID: No doubt of that. Some of the counties now have very good assessors. But I don't believe there is any law in the world that can make a lazy man industrious or competent.

PROF. HAIG: The chief advantage then in a local official is his knowledge of local conditions, and you think that knowledge is not utilized?

MAJOR REID: Not advantageously.

MR. HAGERMAN: In other words you think even under the present laws there are enough efficient men to administer the law so it could be made to operate efficiently throughout the state?

MAJOR REID: Absolutely. I do not think the average trouble comes from what we call crookedness or dishonesty. It is indifference and incompetency, and lack of earnestness.

MR. HAGERMAN: This is a matter of such vital importance to all of us that if there is any other gentleman here who would give us his views on it, I am sure we shall be glad to hear from him. Mr. Sully, have you some suggestion to make?

MR. SULLY: I know nothing about farming.

MR. HAGERMAN: What about the competency of county officials?

MR. SULLY: In Grant county we have little to complain about the county officials or board of county commissioners.

MR. SAINT: Grant county is well assessed. Dona Ana county is the best assessed county in the state.

MR. HAGERMAN: How about Socorro county?

MR. SAINT: Socorro county is a joke.

MR. (C. T.) BROWN: I think there could be improvement in Socorro county. I do not think the officers are dishonest, but inefficient and incompetent.

MR. SAINT: The assessment in Socorro county is twenty-two per cent; that is the worst county in the state.

MR. HAGERMAN: What are the qualifications of the assessor of Dona Ana county that make him valuable as an official?

MR. JOERNS: Mr. Van White has been a surveyor and has knowledge of land values more than the average man; he is also an accountant, which is of great assistance to him. He is competent in every respect, more so than the average man. You cannot expect to find a good assessor in a man who has been a sheep herder or a cow boy.

MR. HAGERMAN: In fact he is the kind of man contemplated under the ideals of the law?

MR. JOERNS: Yes sir.

MR. SAINT: Dona Ana county with Van White in there has an increase this year of half a million dollars, notwithstanding that last year there was added a penalty of half a million dollars for failure

to render returns within the time prescribed by law. In this year the amount of the assessed penalty is practically none.

PROF. HAIG: This man can serve two terms of two years each?

MR. JOERNS: Yes sir, then he steps out for two years.

MR. SAINT: Roosevelt and Curry counties have good assessors.

MR. KASEMAN: I would like to ask what was the gross value of farm products last year.

MAJOR REID: $60,000,000 last year.

MR. KASEMAN: And the assessed value of farm lands?

MAJOR REID: $39,500,000.

MR. KASEMAN: Prof. Haig developed a question of interest, that the tax on an acre of land was $2 an acre, and the net income was ten per cent.

MR. HAGERMAN:In regard to the matter of assessors, Major Reid, have you any different suggestion to make as to how the situation could be remedied?

MAJOR REID: About the best method I can suggest would be to charge one central body with making the assessments of the state; that would be the state tax commission; delegate them with sufficient authority to make rules and regulations governing assessments. If that cannot be done I think the case is hopeless. It is then wholly a question of getting competent, industrious, sincere men to administer the present law. In my judgment in many counties a levy should be made to provide for the survey of lands. There is a lot of agricultural land going scott free from taxation on account of the land being unsurveyed.

MR. HAYDON: What value is placed on agricultural land in the Pecos Valley.

MR. SAINT: It runs $60 to $200 and $250 an acre.

MR. SPRINGER: Is it true that most of the county assessors have complete maps with description of each tract of land?

MR. JOERNS: Most of the assessors have no such maps.

MR. SPRINGER: The assessor of Colfax county compares his map with the county records as to change of ownership of tracts of land, and keeps close track of it, and when an agent who was looking up the question of assessment of real estate throughout the northern part of New Mexico came to our county he found one 160 acre tract not assessed; it proved afterward that it had been assessed to the new owner. That was the only tract at that time that he found not to be on the roll.

MR. JOERNS: There is no land check in San Miguel, Rio Arriba and Taos counties, and these are the three counties in which we absolutely need a check on real estate assessments; and there is no check in Socorro or Mora counties.

MR. HAGERMAN: Major, do you think the system of the county commissioners in Chaves county, to classify agricultural lands in general classifications approximates justice?

MAJOR REID: No sir; as an average it might, but for the individual taxpayer it does not.

MR. HAGERMAN: Is there any possible way to approximate justice without an examination of each individual tract irrespective of sub-classification?

MAJOR REID: Yes, sir. Some districts might I understand where taxes are highest. I have in mind tracts close to Roswell worth $200 an acre from an agricultural standpoint. Land in my neighborhood ten times as valuable is assessed at a lower figure.

DR. CRILE: I would like to ask a question in regard to Mr. Reid's suggestion that the assessors be selected by the state tax commission. Would there be some requirement in regard to qualifications, and tenure of office?

MAJOR REID: I would leave all that to the discretion of the commission.

DR. CRILE: It seems to me the law should provide for civil service qualifications.

MAJOR REID: I do not think there is any more necessity for that than there is for the supreme court to have its clerk examined.

MR. HAGERMAN: If there are no other remarks I think we will adjourn until this afternoon.

Adjournment was then taken until 2:30 p. m.

## TUESDAY AFTERNOON SESSION, AUGUST 17, 1920.

The meeting was called to order by the Chairman at 2:30 o'clock. All members of the Commission were present.

MR. HAGERMAN: Mr. Culberson, with a committee of the New Mexico Cattle and Horse Growers Association, who was to have been here this afternoon, has been detained and will not arrive until tomorrow so we will not hear them until Thursday morning. There is nothing, therefore, definitely on the program this afternoon.

Inasmuch as the meetings of the committee cannot continue more than two or three days and there happens to be here this afternoon Mr. Downer, who is an attorney for the Santa Fe Railroad, I have asked him if he would speak to us briefly in regard to the general subject of taxation of railroads in New Mexico and he has kindly consented to do so.

MR. DOWNER: Gentlemen of the Commission. It had not been my intention to make any talk, in fact I made no preparation for any talk, but you have been kind enough to call on me and I will give you just such ideas as I have.

Now as I conceive the problem of this Commission it isn't essentially the idea of fixing a method of taxing railroads or any other industry or other character of property, but its idea in the main is to perfect, or take out the deficiencies in the present system of taxation in New Mexico. Now for me to talk solely on the method of taxing railroads without adverting to the methods used on other classes of property would, I believe, not be of any great service.

Now it has been said that one of the first rules of the tax attorney, in which class I fall I believe, is to play your own game, talk about your own property and not about the property of the other fellow, and I think that is a good rule both for results and of conduct when you are engaged on the intimate matter of your own tax appeal, because it is unfair and uncalled for to talk about the other fellow's property unless you are engaged in a controversy over discrimination in attempting to reduce your own taxes. You must rely upon the merits of your own case. Now as I view it in this state that idea of playing your game yourself, look after your own property and let the other fellow look after his, has, in a measure, knocked the whole scheme out of plumb so to speak by the demands and perhaps the litigation and contentions of various elements, without any regard to the whole.

Now what I say with reference to the taxation of railroads, or what I have in mind, is largely a comparative statement and a statement as to comparative results obtained by the method used in assessing railroads and the method used in assessing practically all other classes of property.

There has been a general belief, well founded by the facts and can be proven in the record, that the railroads have been bearing for the past several years, five years within my knowledge, at least their just share of taxes and within the estimation, I believe, of the majority of people informed upon the subject, more than their just share. By that I do not mean that the railroads have necessarily been assessed in excess of their actual value, but I do mean by that that other

classes of property—some other classes I would say—have been assessed way below their actual value.

Now up to date the State of New Mexico has been committed in substance to one system of taxation without any refinement or any detail of theory. The idea is that all property should be assessed in accordance with its value; that property of the same class should be assessed the same; and the system which has been adopted, or the aim which the taxing authorities have had is to reach the actual value of each item of taxable property.

Now prior to the valuation report of the Interstate Commerce Commission of the Santa Fe and other railroads in this state the old Territorial Equalization Board, by hearsay, and the State Tax Commission by personal knowledge, used various methods in arriving at the actual value of a given railroad. As you gentlemen all know, by law the Tax Commission is given power to value the properties used in the operation of railroads. The local Assessors have nothing to do with it. As that class railroad property constitutes practically their whole asset. You can in substance say that the railroads are assessed by a central board, the State Tax Commission. Now prior to this valuation report it was a matter of considerable difficulty to be sure that the valuations being placed were accurate or in confirmity with the actual value of the property. The reason for this arose primarily out of the fact that the railroads, with one exception in this state, are interstate railroads and the great problem was the apportionment of state values out of the value of the entire system or project. Take the case of the Santa Fe railroad, with which I am more familiar, running through more than a dozen states, having an immense value, only a portion of which is in New Mexico, it was a difficult problem, with the facts at hand, to arrive at a proper value to give to New Mexico. Under the old system, and still under the present system, various factors were used; the principal ones of which I will mention were the stocks and bonds method. That is, they would take the stocks and bonds of a given railroad, find out what their value was, then apply some method of apportioning that value so as to take out of it the New Mexico value. They would also take the net earnings available from the Interstate Commerce Commission reports, apportion that, capitalize it and see how they came out with that. They would also take into consideration, and did take into consideration, what kind of concern it was, whether the railroad was making or losing money, whether it was a good or bad railroad, and then they put all these various things, and other things, into the hat so to speak, average it up and say the Santa Fe Railroad in New Mexico is worth forty million, fifty million or fifty-five million, as the figure stands about now . They would say with reference to some railroad with all these things in mind, it is worth that much; with reference to some other it is worth that much. They would take into consideration as many of the material things and things which make up value in the mind of the business man, put them together and exercise their sound judgment on the proposition. They also took into consideration economic factors, such as ability to pay. Perhaps the best representative instance of that is the assessment of the New Mexico Central Railroad upon its emergence from a Receivership. They purposely assessed that railroad at less than one-half of what they themselves understood it to be worth and knew the material in it to be worth, simply because to assess it at that figure meant they could pay their

taxes. A greater figure meant they couldn't pay the taxes and back they would go into Receivership. All those things were taken into consideration..

Now it was thought by many that the system was rather vague, that it was rather faulty; that the figures used were subject to such manipulation that the State probably was being cheated in the matter and it was a matter of surprise to a good many people and of congratulation to the "powers that be" that when the Interstate Commerce value came out as upon the Santa Fe Railroad the figures previously fixed by the Commission by this other method came within $100,000 of equalling the physical value. It was merely the demonstration of the proposition that if you take into consideration these intangible things, such as net income or gross income, stocks and bonds, all those characters of economic factors that go to make up real values, you can't go far wrong. We now have, of course, a large measure of guidance in this Interstate Commerce Commission report. It is not quite complete, two items being out, its equipment and land and right-of-way, but those are things that are easily figured and so the railroad situation, from the assessing standpoint, is more or less stabilized.

My idea in calling this system to the attention of this Commission is to point out a lesson which I believe arises out of it—or rather, two lessons. That is you cannot fix by any arbitrary formula or by any arbitrary method laid down in the law an absolute measure or a yard stick from which to measure values, or actual values, but that the various factors must be all taken into consideration and then the sum total arrived at. A manufacturing plant is worth so much from a business standpoint. An expert valuation engineer might go over the project and he would get his figures. Another man intending to buy that project would examine the books; he would examine their property account; he would examine the reserves in the way of markets or material; he would go into all those problems before he would make a bid on it or before he would close a deal for it, all with the idea of arriving at the actual value of that property, irrespective of how many acres of ground the plant covered or just what the material in the plant was worth, but all those things he would take into consideration. Now the first lesson I think that that has taught, or which it brings to my mind at least, is this. That we are somewhat off of the track. When, with reference to other classes of property, we attempt to fix, by the State Tax Commission or some other board, minimum or maximum values, that is a step in the right direction, but it doesn't go far enough. What we need is an actual assessment and actual appraisement of property and in doing that we must not consider entirely what the material in a property is worth or what it is not worth, but what is that particular piece of property worth taking into consideration all factors which make it up. Now in regard to other classes of property, a cow is worth so much on the market, a sheep is worth so much, an acre of agricultural land has a certain market value and it is a pretty sure test. You can go to the records and find out what it sold for. But in more complicated concerns, such as manufacturing, mining or other enterprises those factors you must almost lose sight of if you get at the actual value of the property.

And so my idea is this. That on a complicated concern you can't look at the physical value alone, but that you must consider all

factors that make up that. The other idea is this: That the more or less success, or the more or less justice or the following of the law in the case of the railroads in their assessment arises out of the system of assessment, or primarily out of the fact that they are assessed by an appointed central body.

Now of course it does no good to say that the railroads have no vote. That is substantially true. They have no influence in a political way in a county, and it is well that they haven't, and we see the influence that that situation has when they go before a central assessing body and have their property appraised. The thing is handled upon a business basis. It is handled upon the basis of fairness; fair dealing by the Commission towards the railroads, and fair dealing by the railroads towards the Commission. The Company has, in the few years I have been connected with it, appeared before the Commission with all the facts and figures at their command, have answered inquiries and I know and realize, and am sure there is a cordial understanding between the parties.

Now the evil of the assessment of other classes of property I think primarily arises out of, first, the fact that the Assessors are elected and second, the fact that the assessment is necessarily local as distinguished from an assessment by an appointive central body. If you had a central body with control or power to assess that class of property which is not subject to assessment upon a market value basis, we would go a long distance in the assessment problem in New Mexico, simply because it would be handled on a businesslike basis instead of a political basis.

Now understand me, I find no fault with any particular Assessor, because he is the victim more of a system than of any intention to wrongfully assess. I do know, as everyone knows, that in a few instances Assessors are intentionally playing favors. On the other hand in the vast majority of instances Assessors are not able, and I say it advisedly, they have not experience to assess property. They do not understand their business. They are there temporarily, have a lack of deputies, a lack of funds, and the result is just as we see it.

As I view the problem as a whole, two things can be said from the experience of the railroads from an assessing standpoint. One is that greater success has been obtained because of a central assessing body, and the other is that greater success has been obtained because all factors of value have heretofore been taken into consideration.

Now of course it does no good to complain without suggesting a remedy, and my idea of a remedy on the tax situation in New Mexico is very brief. I am not one who favors a variety of systems of taxation, such as franchise, income and the innumerable ones which I could mention. I do not believe it is adapted to a state with the resources of New Mexico, particularly in view of the onsets made by federal taxes of this same character. As I see it New Mexico is committed to the property tax and it is not the fault so much in the law itself that we are proverbially unassessed in many lines, but it is the fault of the administration of that law. The detail making up the tax structure is the structure of the assessing body and it appears to me that if this Commission would keep that in view, that for the present at least, until the industries in this state take on a more varied character, we would come on best by an attempt through various

means which immediately suggest themselves not so much toward the revision of the primary ideas in the law, but a revision of the law so that its administration would be effective. Now I understand and realize that that is no new idea. It has been urged by many people in this state and for the past four or five years it has been a topic of considerable discussion; but it appears to me that this Commission sits in the best position to make recommendations along this line.

To be more concrete, and because of the time necessarily very sketchy, my idea is that the sore spot in the whole system, insofar as the administration is concerned, is the system of local Assessors. If you can make the office of Assessor appointive, if you can make it in a measure a civil service position requiring certain qualifications, and if you can give to it financial support so that its functions may be properly carried out, a great step in the right direction can be taken. That is perhaps only half way. If you could go further than that and enlarge the powers from an assessing standpoint of your central body, which is now the State Tax Commission, an even greater step will be taken in the right direction.

Now before I close I want to mention one other thing. These ideas of reform are not new with me, although perhaps I have participated in a good many discussions in regard to them, but it has been said against the increasing of the powers of the central assessing board, in the form of the Tax Commission, that it would place too much power in one Board's hands. But I say to you, Gentlemen of the Commission, that in my humble opinion making this board appointive, making it as a matter of precedent and tradition composed of men who understand, who are experienced and who have had experience in this line, will do more toward the solution of the tax problem in this state than anything. I welcome the placing of power and responsibility in a powerful and responsible board. It has been said that if you put all the power into this board they will be influenced just like Assessors have been in the past, but if you must use that as an argument I think it can be pointed with considerable force to the fact that the Tax Commission and the old Board of Equalization having power over a certain limited character of property have never yet abused that power, and I don't thing there is anything in the past that would indicate that in the future anything of the kind would occur, because of the very essential reason that with the power would go the responsibility and they would be answerable for it. As the matter stands now there is nobody, and I say it advisedly, there is nobody to whom you can go and place responsibility for the tax situation in this State today.

Now that is about all I can think of to say in an extemporaneous manner, without any preparation, on the tax problem, and particularly the assessment of railroads, and if there are any questions I would be glad to answer them for you if it is within my power.

MR. HAIG: I have been very much interested in the very broad view you take of the problem. It is very difficult to view the whole situation as a unit and I was very much interested in your suggestion that the way out, the way to achieve equity in the present situation, was to develop the administration and perfect the general valuation of property throughout the state, but I am wondering what your suggestion would be with regard to those classes of property which, so far as we know, have never been brought onto the tax roll anywhere

under any attempt at a capital valuation, such as intangible personal property. What would be your suggestion with regard to that problem here in New Mexico?

MR. DOWNER: By intangibles I presume you mean incomes and such as that?

MR. HAIG: Such as mortgages, bonds, notes, credits in general, good will of business.

MR. DOWNER: Mr. Haig, in considering that problem my personal view is that that class of property should be subjected to a tax, but that it is folly to attempt to catch them under the present law and my idea has been, in such talk as I have made, to confine our efforts first to the system that we have and the property that we have and I didn't intend to exclude absolutely from any taxation that class of property. There must be, necessarily, an entirely different system aplied to that. Take, for instance, the question of the taxation of mortgages. If they were placed under the general property tax, as an attempt has been made in this state many times, why it would result of course, as it has in a few instances, in the mortgages being taken out of the state entirely and made payable out of the state where you can't reach them.

In the case of income, I only have one concrete idea on that with reference to the present system, and that is this. That any income tax system that might be devised for New Mexico must take into account the present system so as to prevent a duplication of taxation, or a double taxation against the present taxpayers. By that I mean, concretely, where a man has property—take the simple illustration of real property, store building if you please, out of which he derives an income and upon the physical value of which he pays a tax, he should not be taxed on the same basis as a man who carries stocks and bonds and derives an income from those stocks and bonds, those being intangible, but real property should be allowed an offset of some character.

MR. HAIG: The question of a setoff against one's income in case an income tax bill were introduced, because of other taxes paid was discussed yesterday and there was a variety of opinions expressed, from the extreme that no setoff should be permitted, to the other extreme that a full setoff should be permitted for any taxes paid on a valuation basis. I take it you would favor the full setoff, that is the use of a tax receipt for a tax on a vacant piece of land, for instance, to cancel the income tax on a man's salary?

MR. DOWNER: Oh, no.

MR. HAIG: How far would you go? Would you be a little more specific?

MR. DOWNER: My idea would be this: That the offset should only extend to the tax paid upon the property out of which the income is derived.

MR. HAIG: Then if a man owned a very large tract of which he only used a small part and obtained a small income from it, the setoff would be to the extent he was taxed on the income from that property. He couldn't use his tax receipt on a big ranch to set off

anything except what net income could be allocated to that particular project.

A. I think that would be correct.

Q. Would you anticipate any great difficulty in dividing up a person's income and passing in justice on these setoffs? Wouldn't it be complicated?

A. It would be complicated, undoubtedly. But my idea is this, if I might elaborate a little, and this is only one instance of a good many, but perhaps the best instance so you will understand my viewpoint. People like myself and others draw salaries for what they do. We don't own any particular property. We don't operate any plant and we do not pay taxes on our salary. We have no means of offset. I think that class of people should be taxed. Another instance, we have in this state, fortunately for the state a big asset, a great many healthseekers, some of them of considerable wealth. They receive the benefits of our state, have all its police protection and benefits of government, but they pay nothing towards its maintenance, being supported largely by incomes from other sources, their homes, etc. Those people should be permitted, I might say, to bear a portion of the cost. On the other hand, to make a specific instance, take the company that I am connected with; take the Santa Fe Railroad—understand me I say that only because it is the best example I can think of—we pay, as I say, on a basis of fifty-five milion dollars and pay nearly a million dollars in taxes every year. Now we do not believe that we should pay in addition the same income tax as the man who doesn't pay any property tax whatsoever. We think we are entitled to an offset on that account. Just how you are going to figure that or just the character of offset I am not expert enough on the income tax to know.

Q. There are difficulties in working it out though?

A. Undoubtedly, but I think there should be some offset to at least alleviate the very apparent injustice that would arise otherwise.

Q. Have you any faith at all in a classification scheme for different types of property?

A. No, I have not.

Q. Why not? Would you mind telling us?

A. Because of the abuse, unless I might qualify my answer. I have not under the present systems and powers, for this reason. The classification scheme in this state, to my mind, has been abused in this way. The State Tax Commission is given power to fix minimum values and my experience and observation has been that if they make a classification, have a minimum, say a minimum value for grazing cattle, sheep or any other class of agricultural property, or timber just so much and I don't think you can classify it. I will say that land every piece of property in any county which would come within that class is given a minimum value and I think personally that when you are on an actual value basis that there is no room for any classification system because the thing is worth so much or nothing. It is worth just so much and I don't think you can classify it. I will say that under the present system of assessing the classification system has been a considerable aid in getting valuations, but if you had a proper

assessing system I don't think that I would be in favor of very much classification.

Q. If you should establish a separate file for those intangibles that we were talking about, perhaps subject them to a lighter rate, do you thing there would be any considerable listing of such property? I understand now there is practically no listing of it.

A. I think, particularly in the case of mortgages, if the rate was made less they would likely come in but of course if the general tax rate is applied to it it practically wipes out the value of the mortgage, the margin on the rate of interest.

Q. Do you think the proportion of such property in this state is very large? Back in the middle west and eastern states they estimate that the intangibles are at least equal in value to the tangible property?

A. That wouldn't be true here.

Q. You have no basis for making an estimate?

A. No, I haven't made a study of it, but that would be my offhand judgment on it.

Q. Have you given any thought to the problem of the equitable taxation of small businesses in the state, particularly mercantile businesses? Do you think the present method of taxing them on the average value of the merchandise is a good way to get at their tax-paying ability?

A. I believe, as to the average value of merchandise, that that is the fairest method when you are committed to an actual value system.

Q. You would make no attempt to value the good will of a small business?

A. Well, I would in a sense, in this way, carrying out the idea that I expressed in what I did say, that is of taking the various factors which make up value in the eyes of an ordinary business man who wanted to buy a proposition. Now if I might illustrate a little further what I said. I touched it briefly when I said that the State Tax Commission, in valuing railroads took into consideration whether a railroad was making money, whether it was a good railroad, whether it had the good will of the people, or whether it was losing money and was bankrupt. Now to that extent I think that factor is the proper thing in arriving at actual values.

Q. Do you think the assessments of railroads now do take into acount other than mere tangible value? Do you think they include good will?

A. I know it has in the past.

Q. Does the Interstate Commerce Valuation attempt to include it?

A. No.

Q. Their figures do coincide with the figures of the State Tax Commission, which you say did take that into account?

A. Yes.

MR. ASPLUND: Wasn't the valuation fixed by the Tax Commission considerably higher in the case of the Santa Fe, five million dollars or so higher than the Interstate Commerce Commission's figures?

A. I will say, in answer to this, Mr. Asplund, you remember in the valuation as fixed by the Interstate Commerce Commission and estimating the two accounts which were not included, that is right-of-way and rolling stock, we arrived at a value of close to $50,000,000, which was practically within, as I say $100,000 of the value which had previously been arrived at by the capitalizations of net earnings by stocks and bonds method and others. It is true that the State Tax Commission said to themselves, "well, maybe this value is a little low; we will put on four or five million to be sure we get it all,' and that is what happened, as you will recollect it yourself. Mr. Turner was there at the time. That is the reason I make the statement that the valuation figured from this other method came within that close of the physical value.

FURTHER QUESTIONS BY MR. HAIG.

Q. As you view the present system as a whole, apparently, the way it has worked out has been that it has resolved its principal value pretty much into a taxation of tangible personalty real estate all through and with almost a total ignoring of the element of good will as entering in as an element of worth?

A. Yes, that is true.

Q. That is evidenced by the fact that there is no allowance for deduction for indebtedness from any tangible property or real estate?

A. Yes.

Q. And you have then gotten away from the idea of a personal taxation entirely and as it now stands the taxation of certain types of property is such irrespective of the interest of individuals in that ownership?

A. That is true. I will say this. I don't believe, in the case of a good many classes of property it has been a success in getting anywhere near the actual value.

Q. They haven't gotten any intangibles or credits but it has practically devolved itself into tangible property and real estate?

A. Yes, sir.

Q. I thought I understood you to say earlier in your statement that you did not favor the addition of the franchise tax, the income tax, etc.

A. I don't favor them until we get equalization by the present system of taxation.

Q. If the Commission should decide that it is desirable to do something in the way of attempting to impose a direct personal tax do you think the income tax would be the best way to do it?

A. I think the income tax would be the thing first for consideration, probably, because I think it would reach a class of property that is not being assessed at all, with the proper officers.

Q. But if we could not work out a system of offsets which did not seem too complicated to operate, we had better leave it alone?

A. That would be my idea.

Q. If there were to be established an income tax do you think it would be better to make it a strictly personal income tax or would you apply it to business as well?

A. I don't see how you could justly apply an income tax unless it was applied equally to business and personal.

Q. You could make it apply to personal earnings from business; that is, the distributive shares of partners, but not to business establishments as such.

A. If you did that the principal businesses in the state, the biggest interests, would entirely escape.

Q. If you had an income tax you think it ought to be applied to mines, railroads and everything else as well as to the business incomes?

A. I think so, yes.

Q. But with some system of offsets?

A. Yes.

Q. So that any payment in the way of taxes on tangible property could be used as an offset?

A. At least in a measure.

Q. It would be difficult to do that, wouldn't it?

A. Of course, undoubtedly. I realize that perfectly.

Q. In the case of a railroad how would you suggest to us that we should apportion the income? Now take the case of the Santa Fe, being an interstate railway, suppose an income tax was imposed so you should pay your equitable share of your total net income. What would be the best basis for apportioning the income between this state and others?

A. Why the system that has been heretofore adopted and has been used in a great variety of instances would be to use the same proportion as the net earnings and physical value in New Mexico bears to the net earnings and values everywhere.

Q. Can you isolate the net earnings in New Mexico?

A. In a way we can.

Q. That is, you would use physical property as the basis for distribution?

A. Both physical property and net earnings as a basis for distribution or allocating to New Mexico the net income, for instance.

MR. SAINT: I would like to make a statement as to the action of the Tax Commission in placing the value above the valuation fixed by the valuation board of the Interstate Commerce Commission. I

think their valuation was about fifty-one million. We took into account the fact that the valuation made covered a period of normal times, and we took into account the increased value of all material that goes into railroad construction at the present time. That was the main factor the Tax Commission used in putting on the extra four million, was that property cannot be reproduced now by the same people and depreciated by the same factor and come anywhere near fifty-five million.

MR. HAGERMAN: Mr. Downer, if it is a proper question and you care to answer it, insomuch as there has so often been so much discussion as to comparative valuation of railroads, do you know the average mileage valuation in New Mexico as compared with other states in which your railroad operates?

MR. DOWNER: Yes, substantially at least. You would rather have merely the bordering states?

MR. HAGERMAN: Yes.

MR. DOWNER: As between Colorado and New Mexico, New Mexico has the greater value; as between Texas and New Mexico, New Mexico has the greater value. What is the difference across the line, Mr. Turner?

MR. TURNER: Runs just about one-half for the whole state. Just across the line it is one-third.

MR. DOWNER: As between Arizona and New Mexico, speaking of the Santa Fe only, the value is slightly greater in Arizona but the taxes we pay is less.

MR. HAIG: Is property any better assessed, more fully, in Arizona than here?

MR. DOWNER: Oh, very much.

MR. HAIG: So relatively you think you pay more?

MR. DOWNER: We pay more taxes per mile in New Mexico than we do in Arizona.

MR. HAGERMAN: As compared with the average tax paid per mile of the whole system?

MR. DOWNER: I don't know as to the whole system. Take, for instance, in Kansas, where the main part of our system is, with vast traffic and double tracks everywhere, we pay, I believe, on a valuation of a little over $70,000 per mile for our main line as against $49,000 to $52,000 per mile in this state. However, the rate in that state is lower, but I don't know that any statement has been worked out on the tax per mile basis. I think, however, the tax paid in California would be considerably more than in New Mexico, Arizona, Colorado or any of the other states. Have you seen any figures on that, Mr. Turner?

MR. TURNER: I couldn't quote them exactly, but California pays on the basis of gross earnings and her taxes are slightly less than New Mexico's is my recollection.

MR. HAGERMAN: How is other property of the railroads generally taxed? As any one else's property is, I presume?

MR. TURNER: Exactly, by the local Assessor. However, there is but little of that. Take for instance, there are a few industries, sidings, maybe lots, and things of that kind. Of course subsidiary corporations such as coal companies, tie companies, land companies, these are assessed by local Assessors.

MR. HAGERMAN: Sheds and stations?

MR. DOWNER: Those would all go in with the land assessment. I might explain something that very strangely there is considerable misinformation on. That is in assessing a railroad a Tax Commission has taken the view that one mile of railroad isn't a proper factor to take into consideration. That it is valuable only as a going, active concern. That is, the Santa Fe Railroad in New Mexico is worth, say fifty-five million dollars and in arriving at that value they take no account of locality or anything, they simply take the terminals, rolling stock, track, roadbed, fences, right-of-way and they put them all into one body and say that bunch there is worth fifty-five million dollars. Then they apportion it upon the basis of mileage plus this factor. They apportion it on the basis of mileage in this way. Take for instance the coast lines, which is our main line running west, takes a value of approximately $52,000 per mile. In localities where large terminals are located these terminals are allocated to that locality. Take for instance Albuquerque has an excess of a million dollars on account of the terminal there. In figuring those terminals they simply use such properties as are common to the line generally. They don't include depot or coal sheds all along the line, but they do include shops, round houses and things of that kind. The same thing would be true of Clovis, $600,000 for terminals. Other localities the same way. There was a revision for the first time this year on the question of allocation of railroad values, particularly in the case of the Santa Fe, and an adjustment was made as between counties in order to put into a county, as near as could be, the relative value of a railroad, based both upon mileage and upon what was there, and, as you can see, it doesn't influence the total particularly and it is a matter in which we are more or less helpless, but they get the whole value anyhow. Mr. Saint can tell you about our struggle for that apportionment proposition and how it has worked out for the first time in concrete form because we had everything in the Interstate Commerce Commission report segregated to the inch, which shows merely the value of those kind of figures in the allocation of values.

MR. HAGERMAN: Take it all in all, are railroads, or your railroad, fairly well satisfied with the present administration of the present system of taxation within the state?

MR. DOWNER: No, we are not.

MR. HAGERMAN: Is that dissatisfaction due to the way your own property is assessed, or the way other property is not assessed?

MR. DOWNER: Well, I would say this: that it is due to the way other property is not assessed, but with this qualification; that in saying that that I believe we are victims of a system of administration rather than of intentional discrimination.

MR. HAGERMAN: We are very much obliged to you, Mr. Downer, for this talk, which has been very informative. Mr. Springer,

was there some question in regard to the allocation of profits or something?

MR. SPRINGER: Yes, I would like to ask Mr. Downer whether the assessment of an income tax against the earnings, even allocated, as he mentioned is done in the case of the franchise tax, would be an unfairness with Interstate Commerce if the portion of earnings on interstate commerce were included in that?

MR. DOWNER: On that question I think there has been a good deal of litigation and I don't believe any unanimity of opinion on it and offhand for me to express an opinion would not be of any great value because, as I say, it is a question of the actual working out of a law, whether as a matter of fact it would constitute a burden on interstate commerce. If an income basis is used as a measure of value why the trend seems to be that if using the income is merely in order to arrive at the value of intangible properties that it is not a burden, necessarily so. Mr. Haig, you might inform us. They have an income tax in Wisconsin, don't they, which applies to railroad earnings? What has been the working out of that?

MR. HAIG: So far as apportionment goes?

MR. DOWNER: Yes, and whether or not it has been held to be a burden on interstate commerce.

MR. HAIG: I am not prepared to give a definite statement about that. It has been some time since I have looked into it, but my impression is that the question has not arisen directly as a net income tax question. I think they still carry through the tax on an arbitrary apportionment on a gross basis, as I recall it, but I desire to make that statement subject to correction.

MR. HAYDON: I understand your position to be with regard to the income tax, that it would be better for this Commission, or the present administrative bodies, to confine itself and themselves to getting all of the property in the state subject to taxation and develop the present system and then if we haven't sufficient revenue take up the matter of an income tax. Is that about your views?

MR. DOWNER: I might put it this way. That the revision of the present system, in order to make it work, is the problem at the present time, because if you go off upon some tangent and work on an income or some other method of tax these inequalities of which we hear so much will go on until the other system is worked out, and because of the inequalities I think this is the present problem. I take a lot different view on the question of the raising of revenue. I don't think that an income tax in any sense should be considered merely as a means or measure of raising additional revenue. That is, if an income tax is a just and proper tax under our system, why it should be made to bear part of the present burden irrespective of excess expenses and not merely as an additional method of taking in more money, an income which to my mind would be fair with a system of offsets, which we may not be able to work out.

MR. HAIG: Do you think it would be posible to work up an administrative force under conditions as you know them in this state, which would be capable of administering a revised income tax? Do you think the state is prepared to pay salaries and in general back up

the administrative force such as would be necessary to handle a tax such as would be difficult to handle?

MR. DOWNER: That would be a difficult problem because of the more or less limited results you would obtain.

MR. HAIG: If you allow a system of offsets your result would be very small.

MR. DOWNER: That is probably true, yes.

MR. HAIG: And the precedent we have here in the way of administrative efficiency, judging by the discussion, insofar as the administration has been in the hands of local officials, has not been a very good record?

MR. DOWNER: Oh, no, not at all.

MR. TITTMAN: Is it a fact that the Commission considers changing the delinquent tax act?

MR. HAGERMAN: We discussed that this morning and went into it quite fully.

MR. TITTMAN: Was the concensus of opinion urged, that it should or should not be changed?

MR. HAGERMAN: The concensus was that it should be changed.

MR. TITTMAN: I don't think it should be changed. The great trouble with it has been that it has been changed too much. We had a law enacted in 1899 that has been interpreted by the Supreme Court of the United States and by the Supreme Court of our own state and had it not been that the legislature in '13 and '15 meddled with the act of 1899 most of our tax certificates I believe would be pretty good. I may be just an ignorant country lawyer on that point, but I really do feel that this law that we have now, being the same as the law of '99, and having been so well interpreted by our court, we would be rather foolish to monkey with it at this time and change it. I think the tendency to tamper with tax matters is not desirable.

MR. CRILE: I would like to ask whether or not this Commission is concerned with the expenditure of funds as well as the raising of them?

MR. HAGERMAN: I will say, in regard to that, that the Commission has not only in view a study of the question of how to raise money, but how to spend it and that the report will undoubtedly start with a survey of the state and state expenditures and as far as possible in the time and means we have at our disposal, will go into the matter of public expenditures very fully.

DR. CRILE: If I might I should like to say something with regard to the budget situation in this connection.

MR. HAGERMAN: We would be very glad to hear from you now on that.

DR. CRILE: The situation at this time is, concretely, about this, and if you will excuse the reference I shall make to the State

College, I want to use that purely and entirely as an example of all other institutions. I am not speaking of the State College except in regard to the budget condition.

We have a school in operation, as there is a school of Mines and charitable institutions in the state. Those who are charged with the conduct of them, regents and trustees, are confronted with problems of administration, of buildings and of equipment. They are enthusiastic about it. They come to the Legislature to get an appropriation and when we get to the legislature we are told we will have to take it up with the budget committee. When we come before the budgt committee we find that committee consists of men who have been elected by votes and who have assumed office about thirty days previous to the time we meet them, at the longest. Whoever they are and however anxious they are to be exactly right in the matter, in most cases not a man of that committee has seen the school, understands its needs, understands why requests are made, and they must necessarily, without any preliminary training or experience or knowledge, say yes or no to this budget. That goes on to the legislature and then the officers of these institutions must appear before a Finance Committee of the legislature usually not one of whom has seen the place, doesn't know whether you are asking for money you should have or shouldn't, but the final result is that the man gets the money who puts on pressure and the man that don't put pressure on don't get it. I submit that is a poor way to spend funds. You have one organization raising the funds and another organization altogether doling them out without knowledge of why they should be doled out or where they should bring the state the largest returns.

It is one of the most discouraging and heartbreaking things I can conceive of and how the President or General Manager of these institutions can long maintain his self respect and, I was about to say integrity, and try to secure funds to conduct the numerous schools of this state, I don't see. It seems to me that the same Commission that is charged with raising the funds, that same one, or some of that Commission, should be charged to visit every institution that comes to this state and asks for help and study it on the ground and know what it is. That every request for funds from the taxes of this state should be filed at the Commission's office at least sixty days prior to the meeting of the legislature, made there as a public document, and any objections or criticisms that any person may wish to make on it they could make and the Commission, knowing its ability to raise funds, the Commission knowing the institution that is seeking help, the Commission that has heard the criticisms against the appropriation asked for, could then, wth all matters in hand from every source, could deliberate and recommend a budget and that budget could pass through the hands of the Governor, who would then just be coming into office (and usually the first month of a Governor's experience in office isn't occupied in figuring out dormitories for schools), therefore this Commission, having time to deliberate on it, could set forth the reason why and recommend a budget for state institutions. The Governor could receive this budget and transmit it, as made, with any suggestions or recommendations or revisions he may wish to add to it, and pass it on to the legislature which could then pass judgment on the request. It would be a dignified way to direct the institutions which are part of the state and, building up the benefits of the state. Such proceedings as that would likely end in an equitable and just spending of money in these various directions.

I wish to add, at the suggestion of Mr. Springer, that when I speak of the Commission my notion is that we should not call this Commission a tax commission, but should call it a Finance Commission and this Finance Commission ought to do a good many things that are done here and there in the state at the present time—Insurance Companies, Bank inspectors, auditors, and things of that sort should all be sent to this commission and this Finance Commission should inspect, visit and inspect these things and this budget should go to the Finance Commission and they should make the recommendation through the Governor of the State who, of course, should have a perfect right to make any suggestions or recommendations he may wish to.

MR. HAGERMAN: I am sure it is the plan of the Revenue Commission to take up the matter of the budget law just so far as they have time and means to do so.

MR. HAYDON: Mr. Sprnger, if you would not object to answering a question brought out by Mr. Downer, I would like to ask you whether or not now is the proper time to pass this income tax law rather than to develop our present taxation system more fully than it is in order to get all the property subject to taxation as far as we can.

MR. SPRINGER: Mr. Chairman, I believe that it would be wise at this time for the Commission to do both; to study and recommend some method of improving the present system so as to secure the equitable and proper assessment of all property on the ad valorem or value basis, and also, if in it's wisdom the Commission believes an income tax is just and proper, to recommend the best type of income tax it can provide, and largely for the reason that it has been stated. and is generally believed, that a great deal of property in this state escapes taxation under our present system which would be taxed to perhaps the full extent, or to a considerable extent, under a just income tax, particularly the so-called intangibles of the state from which the owners undoubtedly derive considerable income.

At this time an adjournment was taken until Wednesday morning, August 18th, at 9 o'clock.

## WEDNESDAY MORNING SESSION, AUGUST 18, 1920.

The meeting was called to order by the Chairman at 9 o'clock. All members of the Commission were present.

CHAIRMAN HAGERMAN: The mining industry in the state may be said to be divided into two great classes, the coal and metalliferous interests. Of course between the great coal operations in the north and the porphyry coppers in the west, there is a vast class of small mines, which I hope some one here will be able to represent in this discussion. This morning has been set aside for hearing the coal interests, and Mr. Springer has kindly consented to present that feature of the problem.

MR. SPRINGER: Mr. Chairman, Gentlemen of the Commission: Since the commission has very kindly invited me to appear and give information upon the subject under consideration, and inasmuch as I have been the subject of violent attack and abuse in the newspapers in connection with this matter, I will ask your indulgence to make a short personal statement.

I realize of course that any man who is successful in organizing enterprises for development, and in borrowing money and bringing capital into the state, to build railroads, open mines, construct irrigational works, which furnish employment for thousands of people, becomes the object of attack and abuse by the newspapers. This happens sometimes through the editor being misinformed by personal or political enemies, sometimes through the desire of the editor and owner to attract attention and build up the circulation of his paper, by pulling somebody down; and I suppose under these circumstances one ought to feel flattered that he is considered of sufficient importance to serve that purpose. I am somewhat used to it and generally pay no attention to it, but this case is different. Until the present owner and editor of the Albuquerque Morning Journal came amongst us, I do not believe in the 43 years I have been in this state there has been a newspaper man or any other man who would have insinuated that I would volunteer for public service and serve without pay during the war in order to build up a reputation and influence among the people and with the state officials to enable me to evade just taxation. I am always willing to be accommodating and help out a newcomer, but this is going too far.

It was not at my solicitation that Governor Lindsey secured my appointment as president of the Selective Service Board of New Mexico, (and it was not a pleasant position;) or that he secured my selection as chief executive officer of the State Council of Defense; or that the Council of National Defense selected me as its field secretary for New Mexico; or that the Governor appointed me as a member of the State Highway Commission; (which occurred all at the same time;) or that Judge Brice, a prominent Democrat, who was state disbursing officer under heavy bond, carrying the responsibility for several hundred thousand dollars of public funds, wished on me, a Republican, the job of handling these funds without bond. I know that a man is not entitled to any special credit for serving the state or Nation without pay and paying his own expenses. Thousands of citizens in New Mexico and all over the country, did the same thing, served in similar positions without pay. Several millions of our best young men served and risked their lives without adequate pay. But I insist that

I had a perfect right to serve without pay, inasmuch as I was, on account of age and physical infirmities, denied the privilege of serving in the army. If I should be entitled to any special credit it would be perhaps if the work were well done, and I am willing to leave that matter to the judgment of the people who knew about it, and will leave it to them whether service of that kind deserves newspaper abuse. So far as I am concerned I have not claimed credit for it, and do not desire any compensation from the people or the state government in any way on account of it. I am perfectly willing to pay my taxes on what property I may be able to keep, and the knowledge, that I did in a measure in my humble way help the people of my beloved state to make good during the great world war, is all the reward I expect or ask.

Now in connection with the matter under consideration, the same newspaper made another charge which is distinctly libelous, or would be were it not so ridiculous; that is that the coal company of which I am one of several hundred stockholders, many of whom are among the best citizens of this state, and of which company I am director, deliberately during the war restricted its output of fuel necessary for the government, in carrying on its war activities, for the purpose of evading federal taxation upon its income or profits that it would have made had it kept its production up to the usual standard. I do not believe that the editor of the paper, or the staff correspondent, would have made such a statement as that if he had inquired into the circumstances. Merely a casual inquiry would have elicited the information known to all the people of New Mexico and the authorities at Washington, that this coal company, as did all other companies and mine operators in New Mexico, of coal, copper and other mines, and people engaged in every other industry, did everything in its power to speed up production; that the president of that company was selected by the government to have charge of the fuel distribution in this district, and that he did by patriotic addresses to the miners and other efforts seek to speed up production; and that the said company, in order to increase the production of coke for the copper smelters, constructed at an expenditure of several hundred thousand dollars new beehive coke ovens, knowing full well that these ovens would have to be scrapped and the investment lost as soon as the war was over.

MR. MAGEE: Did you make note of the issue of the Journal in which that article appeared?

MR. SPRINGER: Yes, sir, it was Sunday, Aug. 8th.

MR. MAGEE: I did not know that such an article ever appeared in the Journal.

MR. SPRINGER: I prefer to go on with the statement.

CHAIRMAN: Mr. Springer has the floor.

MR. SPRINGER: Another charge made in the same paper of Sunday, August 8th, against me and this company was that there was a joker in the 1915 mine tax law of New Mexico and that I was responsible for it. Now, I was not the author of the bill, section or provision referred to, but I will state to you gentlemen, and you can see readily from a reading of the law, that there was no joker in it; it means exactly what it plainly states; and I will say another

thing that is not generally understood, that it was not upon the initiative of the mining men of New Mexico that the old ad valorem system which was in effect before that time was changed by that legislature. That change was made in response to the clamor in the newspapers of that time against the mining men, claiming that they were evading taxation and ought to be taxed at a higher rate. This law did provide a higher rate, some paying double and some paying several times the amount they had been paying before when the assessor and board of equaization undertook to guess the values of mineral in the ground, in the acreage belonging to the mining companies. The system adopted in this state by that law was not new; it was adopted and is in effect now in a number of mining states.

It may be well to go a little into the history of mining taxation in the United States. It has been a subject of controversy in every state since the first discovery of minerals in the United States, and generally one system and then another would be adopted. The system that we have, as I recollect, is the one in effect in Montana and Idaho, except that in Idaho the improvements and equipment and personal property used in connection with the operation of mines are not valued for taxation. A similar law, almost, if not exactly the same is in effect in Nevada, one of the old mining states. The alleged joker in the mine tax law of 1915, the provision that the valuation ascertained from taking the net value of the product shall be taken as the taxable value of all the minerals in the property of the owner including that in the lands contiguous to the ground immediately being worked, was not new or strange. That was the law in several other mining states, that no matter how large the enterprises, the net value of the output should be taken as a valuation for the purpose of taxation of that property. It has been considered and I think, reasonably so, that minerals, particularly coal, far from the outcrop, or far from the market, that will probably not be reached within 50 to 100 years, is not for the purpose of taxation or any other purpose, of an ascertainable value justifying its being taxed as other property is. A great many people do not understand what the present law of New Mexico is for taxing mining property. It is an ad valorem tax system. The only difference between that and the assessment of other property is that it adopts a specific method of ascertaining the taxable value of the property. In other states, such as Michigan, for instance, the system of appraisals is adopted, in which, as I understand it, not only the net value of the product, but other factors enter.

Owing to the great uncertainty in determining the value of minerals which nobody can see, and the difficulty of establishing the values in mining property in this state under the old system, the present system was deliberately adopted by the legislators; and contrary to the statement in the Morning Journal, there was no attempt at concealment, but on the contrary this was the subject of spirited discussion before the committees of the two houses of the legislature and upon the floor of each house. Attention was particularly called to this word, "contiguous" and to its effect, and members of each political party in each house called attention to it and claimed, just as some do now, that it would enable some of the larger corporations engaged in mining to evade taxation upon some of their outlying property.

I am not making this statement in defense or advocacy of this particular system, but simply to refute the charge that it was gotten

in by means of a joker, by concealment as to the wording or effect of the provision. It was the deliberate judgment of the legislators of this state, as it was of those of other states, that this was a certain mehod of determining the valuation of mining property, and it was so adopted. As to its result in this state I want to say that it has produced taxes fully up to the average of taxes paid by the mining properties over the country.

Now in the proceedings of the mining congress published in 1915, taken from the last census, it is shown that in all of the mining states the average taxes paid by mining companies of both classes, metal and coal, is 8.33 per cent of the net profits, the net surplus, not of the net value as determined under the New Mexico law, but of the net surplus; and the average taxes paid by all the coal mining companies and operators in the United States was almost exactly eight per cent of their net surplus of profits.

Take the company that I represent, the St. Louis, Rocky Mountain, Pacific Co. the tax for this year for instance is considerably more than 8 per cent on the net profits. Now the tax is not levied simply upon the net value of the product and that is something that is not generally understood. The owner pays the tax, first, upon all of his land; second, upon all of his equipment, his buildings, personal property, power plant and all of these things constructed at considerable expense; and then what you might call the intangible mineral values, because they are not discoverable by any process that we know of, are taken to be the net value of his output, meaning the market price of his coal or ore when taken out of the ground, less the cost of production. He is not allowed under our law to deduct the same expenses and allowances as he is under the federal income and profit tax laws; none of the overhead charges, or interest on his indebtedness, and as a result the net value of the product of coal mines as defined in this state law is sometimes two, three and four times the net profits. I know of one considerable coal company in this state which is reported to have a large net valuation this year on which it will be assessed, whereas the entire operations were carried on at a loss.

As to coal mining, with which I am most familiar, there is a general misapprehension among the people all over the country. I have been told that a coal mine was a certainty; that you could by a diamond drill, or by looking at the outcrop determine with reasonable certainty the quantity of coal in a given area. Some of the experts of the U. S. Government have undertaken it and make reports of findings; that a given acreage would produce a certain number of tons of coal. To our sorrow we have demonstrated the fallacy of that supposition. The company which I represent is accused of having 500,000 acres of that kind of coal land. My friend Judge Rodey has insisted for years that that land should be taxed at something like five hundred million dollars. The fact is that we own 206,000 acres of land; not coal land, but land; most of it rough mountain and foot hill land, not very good for grazing purposes. This land we were compelled to buy in such large area in order to get the comparatively small acreage of land that we thought was pretty good coal land down near the prairie where it could be reached by railroads. We were also obliged to purchase at that time the prospecting rights, which were reserved by an old land grant company, in some 300,000 acres of land. Instead of that 300,000 acres being proven coal land, that right gives us the

privilege of going in there and prospecting, and if we do find coal of commercial value we can take it out, but in order to do so we must purchase the surface ground necessary. Since we made that purchase 15 or 16 years ago, we have not had the means, nor has there been any reason for prospecting all that land but we have prospected a good deal of it, and we have found that most of it will never be worked for coal. In our prospecting we think we have a few hundred acres of fairly good coal land around each one of our thirteen mines. For each mine that will run from 200, 400 up to possibly 1,000 or 1,500 acres. We believe that is good coal land, but we never know what there is 100 feet ahead of the face of each entry. We find many cases of intrusion of basalt dykes, or places where coal is turned into worthless coke by intrusive sheets of basalt, or where fires have burned out the coal for many square miles. The coal in the Trinidad and Raton coal fields is deposited in lenticular deposits. It may be 12 to 14 feet thick today, and may break off suddenly tomorrow or gradually thin out and disappear. It is true there is evidence of coal measures all over the county, that is, that portion of it within the coal belt, both in the property we have and in the property east of us, where the lands are owned by farmers and others; but so far as we know, so far as we could testify if put on oath, we have not actually proven up above 12,000 acres, so we could prove in court to the satisfaction of court and jury, that that land contains a certain quantity of coal. As to the amount that can be recovered, that depends entirely upon circumstances. As to value of such land it depends largely upon location, market and transportation facilities.

When the A. T. & S. F. Co. first became interested in this coal property they opened what was called the Savage Mine and employed some of the best scientific experts in the country to examine the property and direct operations. That was just a little way beyond Raton, a beautiful exposure, splendid quality of coal from 5 to 8 feet thick, and after spending several hundred thousand dollars they abandoned the mine. They found that on account of rolls and irregularities in the coal vein it could not be worked at a profit. We have had other coal companies and operators start in that county who have abandoned the property for the same reason. I am just stating these facts to show it is not all plain sailing. You can sink a drill hole and may be show from top bottom coal 6, 8, or 12 feet, but it cannot be shown whether it is one continuous vein of coal or half a dozen smaller veins interspersed with black bone or dirt until it is actually worked by tunnels or shafts and drifts.

In order that coal mining property shall be justly valued for assessment and taxation, some method must be adopted which does not depend upon guess work or even upon the opinion of experts as to what the value of the mineral in the ground is. It must be either upon some method, as the present one adopted by New Mexico, based upon the net value of the output, or some method which takes that as one of the principal factors of determining the value, or else it must be upon some arbitrary standard adopted for convenience and which does not attempt to give the accurate values.

Referring again to the company that I represent, I am accused of evading taxation to the extent of a million dollars a year. One paper in Albuquerque professing to obtain its information from the Morning Journal raised that $500,000 a year, making it $1,500,000. The

statement in the Journal was that my company in the last five years evaded taxation in an amount more than $2,500,000.

We have been in operation for fifteen years; we took over a growing concern of producing mines, and had a contract to supply coal to the A. T. & S. F. R. R. in New Mexico district, all that portion of it except west of Albuquerque. The companies we bought out had invested something over $1,000,000 in its equipment, and during the fifteen years we have produced 18,000,000 tons of coal. If you ask an ordinary business man or consumer what would be a fair profit to receive for mining coal I never heard one put it within several dollars as low as the actual fact is, which is shown on our sworn returns. Our profit was 20 and 9-10 cents per ton covering all that period. It is higher than that today, but we do not know what it will be next year; that is, the average. The total profit you may say, or net earning on that tonnage, has been about $3,700,000 in 15 years or about $250,000 a year.

From these earnings there must be set aside money for development of the property; as one mine is exhausted another must be opened at very great expense. While a mine is being worked funds must be set aside to build improvements and equipment necessary to open the new mine. This company has paid its stockholders about $2,000,000 in fifteen years. It has some preferred stock; these stockholders have received little more in proportion, but the common stockholders have received on an average $110,000 a year.

Now gentlemen, these are the facts which you must take into consideration in determining whether or not this company is guilty of evading just taxation, and whether the methods which have been in effect have or have not enabled them to escape their just burden of taxation. Speaking for myself, and I know that that is the feeling of all the mining men in this state, they are perfectly willing to bear their burdens of government, and if some other method can be found that is more just and equitable, we are perfectly willing to have the legislature or the tax commission, or the assessors adopt any method that will be fair; just so it is not discriminatory against us, and so we can do business in competition with the coal miners just over the hill in Colorado. That is something for this commission to take into consideration.

MR. JOERNS: Are you familiar with assessments in Colorado?

MR. SPRINGER: In Colorado they have adopted different methods of taxation, and I believe the method of taxing metal mines is different from that in the valuation of coal mines. One of the methods used there similar to ours was the value of the mine for the purpose of taxation was based upon the net value of the product. That was used as a factor in determining the assessed valuation. As to coal lands, they have mostly been assessed there as they were in New Mexico prior to the adoption of our present law.

MR. JOERNS: Is there any clause in the Colorado law with reference to reserve coal land?

MR. SPRINGER: There would not be if they undertook to assess all lands at actual acreage value. That was in regard to metal mines.

MR. JOERNS: Are coal lands assessed on acreage basis?

MR. SPRINGER: I think it is left to the county assessor. We have with us here a gentleman from Colorado, who is familiar with that subject, and I hope the Commission will give him an opportunity to be heard, Mr. Simpson.

PROF. HAIG: Would you mind telling me what would be the competitive states taken into account?

MR. SPRINGER: Colorado, Oklahoma, Kansas and Texas.

PROF. HAIG: There is no coal in Arizona?

MR. SPRINGER: Nothing to speak of. If the burden of taxation were so increased upon the producers of coal in this state, naturally the people would have to pay the additional cost; in order to operate, mining men and manufacturers do. They could not otherwise continue in business, and in that case, if the taxes were raised very high the consumers would either pay the tax or buy their coal in Colorado and pay transportation cost, or probably that is what they would have to do because the New Mexico operators might be forced out of business. I know that is not the wish of the people, nor of the present owner and editor of the Morning Journal, or any other newspaper. I believe most of this agitation is the result of misapprehension and misinformation, and I ask the pardon of this commission for having gone into that matter so fully; but I believe there is one matter we must know and consider, and I know this commission will do that. This matter must be settled on a just equitable business basis regardless of public clamor.

MR. HAGERMAN: I think the matters brought up by Mr. Springer are such that the commission would like to ask him various questions. As to the personal matter, it is not one that the commission can go into except collaterally as it affects the whole question, I believe it is well to hear from Mr. Magee before we proceed further in the discussion of the actual matter in hand.

MR. MAGEE: I have nothing to say, Mr. Chairman, further than that I desire to be perfectly fair.

MR. HAGERMAN: If you have nothing to say further than that in regard to the statement made by Mr. Springer, we would like to have your view in regard to the matter of taxation of mines which you have so fully discussed in your newspaper.

MR. MAGEE: I would like to make my statement in the light of facts brought out in this discussion there are three or four questions I would like to ask Mr. Springer at the proper time, as there are some things he could throw some light on.

MR. HAGERMAN: That being the case, we will proceed with the discussion of the case brought up by Mr. Springer, if you will permit us to do so. I believe it is better for us to ask Mr. Springer questions, and perhaps in the course of the discussion these matters will be brought out.

PROF. HAIG: There are a number of interesting points, Mr. Springer, some specific, and others dealing with general principles. What you had in mind was that the coal lands were first taxable by the local assessors as non-contiguous lands, and then all other lands

attached to the operating mines were covered by an arrangement where the net output was accepted in lieu of the land.

MR. SPRINGER: All of the land is assessed.

PROF. HAIG: Does the value of the contiguous land enter into it?

MR. SPRINGER: Yes, that is so in regard to the acreage, no matter what the acreage is, if it is the property operated by that company. Most of the land of a large property is assessed as grazing land or agricultural land, or timber or whatever it may be.

PROF. HAIG: Also, with regard to your statement that any method which we might adopt fairly indicative of the taxable value of a mine, must be a method which must not depend upon guess work. Do you think it is possible to tax anything in a manner so as not involve guess work?

MR. SPRINGER: That depends upon the basis.

MR. HAIG: Can you conceive of any kind of property value other than income value which does not involve an element of guess work?

MR. SPRINGER: There is no guess work about the present system.

PROF. HAIG: Do you think it possible to arrive at capital value without involving guess work?

MR. SPRINGER: Possibly not. What I mean by guess work is for instance, if the assessor or tax commission or its agent is required to go and examine the property and determine from what he can see and hear what the assessable value should be, that is what I call guess work. Now under the present system there is no guess work. The surface value of the land is assessed at the same rate as other lands according to surface. He can see the equipment, buildings, power plants, cars, track, houses used for employees, and value them as other property is valued and he can see exactly from the books of the company and from sworn returns what the mineral value the whole property should be assessed at. Of course if that company has outside non-contiguous lands that have been proven to be coal lands, so long as under our present system that even outlying coal lands with no present productive value and which may not be worked in a hundred years, shall be assessed at some additional value on account of it being coal land, that is one element of guess work.

There is a provision in our law that prevents evasion in payment of taxes through non-production. In case of a large property it must be operated up to the reasonable demands of the market. The coal market is limited by cost of transportation, coal can be shipped to only certain distributive points, and on account of transportation our market is limited in that way. If a man starts a coal mine here and does not produce what the market demands he does not get the benefit of the contiguous land proposition.

PROF. HAIG: If he did produce at a loss it would disqualify him from coming under this contiguous clause?

MR. JOERNS: If he did produce at a loss there would be no assessment.

MR. SPRINGER: If he is producing at a heavy loss he is probably not gaining anything by trying to evade taxation. I mean, he must earnestly endeavor to produce the coal that the market will take, and if he does that he will not produce at a loss. Now, if it is a coal property and there is no demand for the coal, and he is away off where he cannot get coal to the market, he is not going to the expense of digging a hole there. He has no market. If that were possible under our law no doubt some owners might have tried it, but they have not, and the assessor and tax commission would not stand for it.

PROF. HAIG: Here we are trying to work out a system which will result in charging against mines their equitable portion of the state's tax burden. As I understand it the system contemplates that that end is best attained when each economic interest contributes in proportion to the value of its property. It is also evident, as you agree with me, when you say the capital value cannot be arrived at in case of property incomes accruing over a series of years, that guess work even in case of real estate investment is involved. Do you oppose any system we might suggest which would involve guess work?

MR. SPRINGER: No.

PROF. HAIG: Do you think that even if we should tax mines in this state upon the net income, as defined in the federal law, allowing deduction for depletion, that guess work would be eliminated?

MR. SPRINGER: My answer to your previous question is it must be guess work. There is always guess work when you undertake to assess mining work on actual value.

PROF. HAIG: Can you escape guess work even if you go on an income basis?

MR. SPRINGER: Certainly.

PROF. HAIG: Do you think the federal income law itself escapes guess work?

MR. SPRINGER: It is not an appraisal.

PROF. HAIG: You are assessed on a net income and allowed to make deductions for depletion?

MR. SPRINGER: Yes sir.

PROF. HAIG: Now that depletion is based upon estimate and appraisal?

MR. SPRINGER: I think there is a definite percentage in the regulations.

PROF. HAIG: It depends upon the life of the mine? It rests upon appraisal, so that even in income taxation you cannot escape guess work?

MR. SPRINGER: Yes, but that is a very small factor.

PROF. HAIG: It is obvious then that we cannot work out any system not involving guess work. Is it not a fact also that the possibility of error in making these appraisals is taken into account by competent mining engineers?

MR. SPRINGER: Sometimes perhaps it is.

PROF. HAIG: Then I take it you would not object to a method involving some guess work?

MR. SPRINGER: I think the system ought to be one as near certain as possible and have as little chance for guess work as possible.

PROF. HAIG: Guess work is there?

MR. SPRINGER: It is there to much greater extent in one system than in another.

PROF. HAIG: Now the present system is the ad valorem system. The justice of the present arrangement rests for its basis upon the capacity of the administrator that the present method does arrive at equitable valuation. And you would be willing to rest the case on that ground?

MR. SPRINGER: As I said before, the present system was not particularly advocated by the mine owners, but if you can find some other system, better for all concerned we hope it can be done.

PROF. HAIG: Equity in mining taxation means the same rate on mining interests as upon other interests. You believe that accurately interprets the sentiment of the state? You do not believe in the penalizing or subsidizing of mines?

MR. SPRINGER: No.

PROF. HAIG: Would you favor an attempt to arrive at a more exact valuation of mining property than we now have?

MR. SPRINGER: Certainly. If there is a plain method.

MR. HAIG: You think the proper method is to examine the ground to arrive at a better valuation? You would not favor going on a flat income tax for a mine?

MR. SPRINGER: I feel certain the mine owners would be willing to pay on an income basis?

MR. HAIG: Can you suggest how the income tax might be adjusted so as to put mines on approximately the same basis as other property; that is, tax the net income of the mine allowing deduction for depletion, and allowing the mines to replace its investment at market price, how would you suggest that it would be necessary to tax that income to put the mining industry on the same basis as the farming industry.

MR. SPRINGER: That is a very difficult question to answer.

MR. JOERNS: How about capitalization of income?

MR. SPRINGER: That would be an entirely different method of taxing mining property.

MR. JOERNS: The present mine tax law is also different. Don't you think capitalization would equalize?

MR. SPRINGER: I cannot say that it would. I am not thoroughly satisfied that it would. Perhaps that is one of the factors.

PROF. HAIG: It is clear, is it not, that the net income of a mine, I am not speaking of the net product but the net income, is the smaller sum than the value of the mine ————

MR. SPRINGER: You mean the net profit is less than a fair profit on the selling price?

MR. HAIG: The net income from a mine is smaller than the price, and that would mean it would be necessary to increase the rate? Suppose we have a mine here with a net income of $10,000; and suppose the life of the mine was ten years; it would be necessary to increase the rate imposed upon that $10,000, to put the mine on the same basis as the farm. Then it is a question of deciding what rate should be applied.

MR. SPRINGER: You mean if you would eliminate the present physical valuation?

PROF. HAIG: I was wondering whether you had an idea as to what would be the proper rate to charge the net income of a mine, to put it on the same basis as other interests.

MR. SPRINGER: Under the present method 8 per cent.

PROF. HAIG: You would make full allowance for depletion.

MR. SPRINGER: I do not think you can apply that principle to all kinds of mines of different kinds and different sizes.

PROF. HAIG: I realize it would be difficult to take into account depletion and deduction necessary to build up a mine and replace reserve if used up, but if that were done it seems to me, you could get ————

MR. SPRINGER: In case of a coal mine, it is different from a metal mine; the coal mine is sure to be worked out in a few years, so it is not profitable; in the meantime you have to set up a reserve to move camp and open a new mine.

PROF. HAIG: That would be taken care of by proper deductions.

MR. SPRINGER: Circumstances are so different, I do not see how you can evolve a system equitable for all.

PROF. HAIG: The risk in a coal mine is of the same nature although it may differ to some extent; there is the risk of the mining running out.

MR. SPRINGER: Other risks are greater; losses on account of accident are very much greater in coal mines than in many other mines and many other industries.

PROF. HAIG: It is quite apparent that under a system of taxation which attempts to reach property, there is involved a certain prepayment of taxes in anticipation of gains?

MR. SPRINGER: Yes, I think that is correct.

PROF. HAIG: That is, the value which is placed upon a lot is a reflection of the future incomes, which may never be realized, under the theory of the law which taxes on the basis of capital?

MR. SPRINGER: That is not necessarily the case under our present law. It is not determined as a matter of principle in this state upon the theory you mention.

PROF. HAIG: It must be as a matter of fundamental economics; that is, a man must anticipate future incomes.

MR. SPRINGER: It is just a suggestion as to the production of coal mines; the production must be far bigger, continuous, etc. The producing of coal at a loss does not take the property out of the non-producing class for purposes of taxation.

MR. JOERNS: It would exempt land from being taxed as coal land.

MR. SPRINGER: There is a mine operating now on a large scale on an actual loss, yet it is paying a fair tax.

MR. JOERNS: What if they never get the product? We have some properties operating on a large scale but show no net product.

MR. SPRINGER: I do not know of them.

MR. JOERNS: The land is not assessed as coal land but as grazing land. There is no output; they are assessed as a producing mine under the law.

MR. SPRINGER: They are assessed on their equipment and improvement.

MR. JOERNS: Do you think that is sufficient valuation for the state?

MR. SPRINGER: I would like to know more about the case.

MR. HAIG: It is apparent that the law as it now stands contemplates to distribute the tax burden upon the basis of all value owned by different interests. That does involve taxation of values contingent upon future incomes being realized, which may never be realized. Insofar as the mines are put on an income basis in order to eliminate guess work ,upon the basis of taxation of net income; or insofar as the present system does utilize income as a basis, and insofar in the third place as the tax system may be modified by the introduction of income tax as a result of the deliberations of this commission, insofar as this element of substituting income for property as a basis for taxation, does not that introduction result in the elimination, in the case of a mine, of value based upon anticipated, not realized returns. It is obvious, is it not, that the farmer has to pay a tax upon the value of his farm, which is based upon present estimate of the future income of that farm; he is asked to prepay taxes on future incomes.

MR. SPRINGER: That may be so in theory. That is probably the theory of the law. Your deductions are probably correct.

MR. HAIG: Would you say then that it was probably correct that taxation on the basis of income would offer an advantage on incomes so taxed, as compared with other property taxed on the basis of property value, if they were taxed on a basis of values not yet realized.

MR. SPRINGER: I cannot say that the tax upon income basis would give them much advantage. It might if the principle were exactly in accordance with the theory of the law as you present it.

PROF. HAIG: It certainly is a principle to tax a man on his farm on the basis of unrealized income.

MR. SPRINGER: That is probably true, but they do not use that as a basis. They assess upon an arbitrary basis.

PROF. HAIG: But it must be the sale value of the land?

MR. SPRINGER: The sale value of the land is not always based upon the future of the land; mere appearance and location are elements that may enter into it.

PROF. HAIG: Under the present law, is it not true that if a man owns an appreciating asset, that is, something he buys upon which he can hope to earn a current income, hoping to sell at a higher price, is it not true under the present law that it is possible in case of a coal reserve to market it at lower expense than it is possible for a man who owns an appreciating asset in some other form.

MR. SPRINGER: It may be true, but not if the other man's property contains such an element of chance as this supposed coal reserve. But in the present value of the asset, whether it be coal reserve or land, the element of chance shows a grater chance of loss in case of the coal reserve.

PROF. HAIG: Can you suggest any way of crystalizing that arrangement?

MR. SPRINGER: I confess I cannot under the present system and conditions. Other mining states have not been able to suggest it either.

PROF. HAIG: It is the same point raised as to the relative equality as between different mining operations; do you think the present situation does bring a condition of equity as between coal developments in the state and the operations of the contiguous clause?

MR. SPRINGER: I think it does. Another thing that has been shown by the investigations of the Mining Congress and by the investigations of the U. S. Geological survey is that it is not customary to assess the coal values in land except where the property is being worked, or where it is being used as coal land. Take the state of Illinois, Iowa and Indiana, hundreds of thousands of acres of coal land exist in these states, not valued and assessed as coal land. They are farms. If the farmer sells 20, 40, or 60 acres in these states, and it is used for coal mining, it is valued as coal land; but the rest of his farm, even an adjoining farm of the same character, is not assessed as coal land.

PROF. HAIG: Are you acquainted with the coal mine laws of Pennsylvania and Ohio?

MR. SPRINGER: I was thinking more of the states of the Mississippi Valley.

PROF. HAIG: In case the state attempts to tax on the basis of the value of the property, do you see any reason why a man who owns

land containing coal value should not be taxed on same more than the man owning land having no coal?

MR. SPRINGER: If it is known to be underlaid with coal valuable from the standpoint that it may be utilized and marketed in a reasonable time.

PROF. HAIG: You would not pay any more in 40 or 50 years for that land than for grazing land? Suppose you have two plots of land, one coal land and the other not operated as coal land; this man has proven coal land but is not operating. Is there a condition of equity between the two?

MR. SPRINGER: It is hard to say. It depends upon circumstances.

PROF. HAIG: In casting about trying to think of some way by which mining property could be put on a basis equitable as compared with other property, it obviously splits itself into two questions; a tax on income, or on capital values. I understand you favor the income tax from your testimony, in addition. That would apply to mine as well as other property?

MR. SPRINGER: Yes sir.

PROF. HAIG: In trying to work out a scheme which would result in equitable taxation of mines, assume that an income tax on net earnings from property made up of an appreciating asset like a coal reserve, is depended upon to equalize the burden on such property as compared with similar property assessed on capital values, it would be necessary that you should count as income the profit which is realized as a result of sale of that asset when sold. The federal law would count that as gain and submit it to taxation. Do you think it would be a safe method, that is, under the state income tax law, would it be necessary that the present subject of taxation should be a resident of the state?

MR. SPRINGER: I do not know that it would, upon income derived on investments in the state. You could tax him upon his business in the state.

PROF. HAIG: But suppose his interest is represented by shares of stock in a corporation, or by ownership as an individual in certain properties. In that case if that individual chanced to be a resident of another state, would there be a chance of reaching him?

MR. SPRINGER: Not directly. He could be reached indirectly if his interest is in property located in the state and producing an income in the state.

PROF. HAIG: Suppose I sold a coal reserve, and lived in New York, and I made a million dollars on this sale.

MR. SPRINGER: It would be hard to get at it.

PROF. HAIG: It is also true that the purchaser of my property in New York would have a perfectly fair claim of charging for depletion. In view of that can you see a way of working out an equitable tax on mines in this state on the basis of income?

MR. SPRINGER: If the object is equalizing, I do not. My idea

about income was not for the purpose of equalizing. I think the question would have to be worked out for each mine according to circumstances.

PROF. HAIG: Do you think the difficulty could be got over if adequate provisions could be made for a tax on reserves, that most of the difficulties could be ironed out?

MR. SULLY. I think so. If we are going to put mines on an equitable basis, as compared with other property, it must be done in some other way than by tax on income.

MR. SPRINGER: You ask me if I can suggest a solution. There are great difficulties in the way no matter what methods you adopt.

PROF. HAIG: One other point, the problem as to what is the proper size of a coal reserve properly contributable to a given mine. Have you any suggestion with regard to size and number of years operation?

MR. SPRINGER: No sir. As the coal is supposed to be in the ground a long way from the market or railroad, it may or may not be worked out in the next 50 or 100 years, and I do not think it has taxable value.

PROF. HAIG: What can be gotten for it at present?

MR. SPRINGER: Sometimes you may be able to induce a man to buy it by making certain representations, but if you come down to what it is worth, as to a possible income to be derived in a given number of years, it has no such value.

MR. SULLY: I made a few figures the other day in discussing Mr. Springer's 200,000 acres of land, and figured that if that acreage contained 8 feet of coal, he would have at the rate of 2,000 tons a year something like 4,000 years to extract that coal, and if you attempt to figure out the time, it has no present value at all. You could not pay taxes on the reserve if you took all of that coal and put it on top of the ground, for it has no value. That is a practical proposition. Whether or not in Mr. Springer's holdings there are hundreds of thousands of acres of coal land that cannot be used for years beyond our life time, nevertheless it is expected to go on and get their benefit to keep the state going.

MR. HAGERMAN: In the course of your discussion you mentioned the fact that you believed the assessment and taxation of coal lands in Colorado were at a lesser rate than in northern New Mexico. We have here a report of the Colorado Tax Commission for 1919. You state that in order to compete with Colorado you could not pay taxes on the land basis.

MR. SPRINGER: If we had been taxed upon the amount given by our critics we could not compete with Colorado. I believe the rate is as high in this state.

MR. HAGERMAN: This report shows that the amount of coal lands assessed in Colorado, productive coal land in 1919, 52,311 acres, at the rate of $127.00 per acre, and on non-productive coal land, 168,000 acres with an average of $45 per acre. How do these figures

compare with the figures, if you know them, of the productive and non-productive coal lands in Colfax county?

MR. SPRINGER: I have not figured on that basis. The net value would be of the proven value of the coal lands contiguous to the mining operations. As to the non-productive coal lands it is probably about the same. In one case in Colfax county ——productive coal land was taxed at $109 per acre; the other was about the same $45 or $46.

MR. HAGERMAN: You did not include in the classification non-productive coal land.

MR. SPRINGER: No, in one case there was a lot of coal land that had been producing, but I understand production had been abandoned. May be that is the reason the land was valued at a higher rate. The valuation of the property of this coal company in Colfax county is $4,270,000 for the year 1920. You may see how that compares with the assessment of $10,000,000 for coal properties in Colorado ten times as large.

PROF. HAIG: Colorado does not apply the contiguous property clause?

MR. SPRINGER: It is applied on a different basis; they do not have the contiguous land clause there because they undertake to assess all of the land at actual value.

PROF. HAIG: They choose to apply the contiguous clause to mineral land but not coal. Do you know whether the contiguous clause in other states applies to coal as well as mineral.

MR. SPRINGER: I cannot say as to that.

MR. SAINT: In looking through the mine laws of the various states I do not find a single state assess metal and coal mines on the same basis.

MR. HAGERMAN: Mr. Springer, are you familiar with the report of Lee & Knowlton?

MR. SPRINGER: I have seen it.

MR. HAGERMAN: Do you think that it can be relied upon?

MR. SPRINGER: I do not. I do not think that any expert who goes out and looks over the land can be relied upon when he says there is coal 800 feet below him. These reports as I understand are merely theoretical; they show that the area is within coal measures within the coal belt; they may locate veins six inches in thickness and figure out the amount of tonnage, and nobody knows the amount recoverable at a profit; so I say these reports are theoretical.

MR. HAGERMAN: It discusses here one point which you brought out very clearly as to continuity or non-continuity in coal measures, and he says some of the bodies of sandstone and shale are in the form of broad lenses and that some of the coal beds also are lenticular and that others coalesce to form a single bed. There are beds of coal that have been worked in mines or prospected along the outcrop to points where they were too thin to be worked profitably. There are many places where shale or sandstone partings in the coal in-

crease laterally to considerable proportions. Richardson has described a notable instance where a thick bed of coal is split into two thinner beds which in less than half a mile became separated by 30 feet of sandstone and shale. No doubt many similar cases will be found as mining progresses, but where one notable exception of this kind is found there are probably scores of places where the coal beds, although somewhat variable in thickness, are continuous for long distances and where the intervals between them are relatively regular.

MR. SPRINGER: As to these things they are accurate because they are taken from actual experience. Take one case as an instance. We drilled a hole to ascertain the distance ahead of our entry showing pretty good coal. At 80 feet we were in pretty good coal; we went 6,000 feet without finding coal workable in between.

MR. HAGERMAN: They go on to say that the coal outcroppings along the Escarpment of the Raton-Cimarron canyon are relatively regular.

MR. SPRINGER: That is not an accurate statement. You can find coal outcrops at many places, and yet find places where there are many miles where coal is absolutely wanting, and many miles where the outcrop does not show coal of a workable character.

MR. HAGERMAN: Are there enough indications of coal along that area to base a commercial value on the whole acreage?

MR. SPRINGER: I can only say as to my own knowledge that I would not pay anything for the coal south of Vermejo except where it does appear in workable quantity. If I were to go into the coal business I would not pay anything for them.

MR. HAGERMAN: Has a commercial value ever been placed on that area for purposes of promotion, or for selling of bonds?

MR. SPRINGER: Underwriters did get out circulars, in which they undertook to show the value of that whole property, including the whole area of coal land.

MR. HAGERMAN: The coal deposits in your county, for instance can be compared as to regularity and certainty with the iron deposits in Michigan and Minnesota, and can be reached by diamond drilling operations?

MR. SPRINGER: They can be reached by diamond drilling operations, but much of the coal is under an overburden of 800 to 1,000 feet, and it is practically impossible to determine its value.

PROF. HAIG: Are you satisfied with the Internal Revenue Department's ———— upon depletion?

MR. SPRINGER: I do not think that has been determined. We made our returns and paid our taxes. We have not been advised of any audit.

PROF. HAIG: With regard to your own estimate as to the length of time it could reasonably be brought within the perview of profit valuation, that is coal that could reasonably be extracted within 25 years should be excluded from present calculations?

MR. SPRINGER: That is hard to say. It depends also upon whether the coal is known to be there in such quantities.

PROF. HAIG: Suppose you know it is there. Would you say 20 years or 10.

MR. SPRINGER: Possibly 20 years. If for instance it is something you are working on for market and transportation, we figure ahead possibly five or six years.

MR. VAN HOUTEN: How would you determine how much coal you could mine 25 years from now? What would the market be at that time? I do not quite agree that 20 years should be the limit.

MR. SPRINGER: I was trying to sell a coal property to one of the ablest men in the United States, and he told me that the world was on the eve of a discovery at that time which would render our coal properties worthless. He was a very able man. He did not say that because he wanted to turn down my proposition, but because he believed such a discovery was near at hand.

MR. HAGERMAN: Mr. Magee, we would be glad to have you make any general statement you wish, or ask any question of Mr. Springer, if you will ask the questions through me as chairman.

MR. MAGEE: I do not care to ask any questions under the conditions imposed.

MR. HAGERMAN: Would you care to ask questions if no conditions were imposed?

MR. MAGEE: There are two or three questions I would like to ask, and will be glad to have the chair intervene if any question appears improper.

MR. HAGERMAN: We will be glad to have you ask the questions.

MR. MAGEE: Mr. Springer, properties do change hands at times in mining interests do they not?

MR. SPRINGER: Yes sir.

MR. MAGEE: In selling and buying there is some way of arriving at and agreeing upon the value of the property?

MR. SPRINGER: Yes sir, sometimes by judicious advertising and planning.

MR. MAGEE: If I have a lot for sale, a vacant lot, I have in mind the price I am willing to take, and the buyer the price he is willing to give. An estimate of what would be the reasonable going price constitutes approximately the price the assessor would fix on the lot would it not?

MR. SPRINGER: It is not particularly the case in this state.

MR. MAGEE: In determining the value of a vacant lot for assessment purposes, how would you arrive at it?

MR. SPRINGER: I presume we would have to take the methods used now. A committee is appointed by the city authorities to get together and arbitrarily fix a valuation.

MR. MAGEE: Do they arbitrarily fix it without considering the going value of the market?

MR. SPRINGER: Theoretically, that is the principle.

MR. MAGEE: Why should not a method be adopted in taxing your mine on what is the reasonable going price?

MR. SPRINGER: That is a matter of opinion. You cannot tax an opinion. It is so difficult to determine. Suppose I should work up the sale of a mine at $10,000,000. That is no criterian that the mine is worth that money.

MR. MAGEE: Is not that true of the town lot?

MR. SPRINGER: Not so likely.

MR. MAGEE: Does not a change in the trend of the business direction in town, or residence district, or any variety of things intervene to show the property less valuable than estimated?

MR. SPRINGER: That is true.

MR. MAGEE: Now if my building or lot is assessed at a reasonable going value, why should not your property be assessed on a reasonable value of its productivity and accessability?

MR. SPRINGER: It is the experience of mankind in all countries that that is not a reasonable, equitable method of assessing mining property, containing as it does elements of risk.

MR. MAGEE: You do not think that is an equitable basis?

MR. SPRINGER: It has not been considered an equitable basis. It is very difficult to establish the going value on mining property, far more so than to establish it on farm land.

MR. MAGEE: You carry your property on your books as having a book value?

MR. SPRINGER: Yes sir.

MR. MAGEE: You have some value for the purpose of selling stocks and bonds?

MR. SPRINGER: Nominal values.

MR. MAGEE: Is not the value you place on your property determined by the stocks and bonds and market value?

MR. SPRINGER: No sir.

MR. MAGEE: You place a different value on it than is represented by the stocks and bonds?

MR. SPRINGER: Yes, as represented by the market value. There are a lot of things of not real market value.

MR. MAGEE: And you feel that your properties are less valuable as result of development work?

MR. SPRINGER: Some of them are less valuable, some of them more.

MR. MAGEE: Taken as a whole, are they less valuable or more valuable?

MR. SPRINGER: More valuable.

MR. MAGEE: Then the actual amount taken out from year to year does not represent the whole profit because there is an increased value that you expect to take out in the sale price?

MR. SPRINGER: We may realize that expectation, and we may not.

MR. MAGEE: So may I with the town lot, sell at $12 or at $600, may I not?

MR. SPRINGER: That is true.

MR. MAGEE: I wish in making this statement to disclaim being a tax expert. I wish to express the view that there is no difference between mine property and other property in the mode of arriving at the value of property in which a reasonable going value of any piece of property may be the basis that is taken for the taxation of that property; that to allow the holding of a considerable amount fo non-productive acreage without reasonable requirements for development of the mine and without being assessed for taxation, encourages a monopolistic tendency, and the state by its favorable taxation attitude with reference to these resources, tends to create monopoly. I feel that the question of exhaustability and depletion are factors that enter into what is the reasonable going value of the property. My viewpoint is that the reasonable going value of any property, horses, cows, town lots or anything, ought to be the basis taken. If I have a lot that does not increase in value, the taxes will confiscate it and I will have no lot; therefore to talk of confiscation of non-productive property is to place a subsidy upon it not placed on my lot; to allow companies to hold large areas, putting an increased value in their holdings, is to place concealed profit in that property to be taken out at a future time and results in the evasion of taxation on that property.

PROF. HAIG: Of course mining property, although it may be valued in the same way as other property, it does present difficulties to the valuator.

MR. MAGEE: Yes sir. I think the specific difficulty of assessment is great.

MR. HAIG: Do you think that task should be entrusted to a local assessor or central authority, or do you think it important enough to employ skilled technical assistants?

MR. MAGEE: I think a board of three skilled men, mining engineers, would be required. Much of that data would be of permanent value from year to year.

PROF. HAIG: Do you think that plan would be better than any arbitrary method we could work out?

MR. MAGEE: Yes sir.

MR. SPRINGER: Mr. Magee, you maintain that property ought to be assessed for purposes of taxation practically in accordance with the going value?

MR. MAGEE: Yes sir.

MR. SPRINGER: In case of a mining corporation, do you think they should be assessed at a higher rate than their going value?

MR. MAGEE: No sir.

MR. SPRINGER: Then if a concern issues stocks would sell for instance for $5,000,000, do you think it should be assessed on a basis of fifty or a hundred million dollars?

MR. MAGEE: No sir, I do not think stocks or bonds should be the factor.

MR. SPRINGER: I am glad to know that you do not agree with the statement published in your paper.

MR. MAGEE: We can answer better after the property is assessed under a reasonable assessment law.

MR. VAN HOUTEN: I would like to make a short statement. There is a large amount of land in northern New Mexico, in the coal belt which is principally located on the Johnson mesa, and which is held by farmers in small ownership. Some of the land shows outcrop of coal; this outcrop land has been located in 20 and 40 acre tracts under government regulations and is returned as coal land but the total amount returned as coal land is very small, altogether 150 acres on this vast tract. Now according to government report that tract is all coal land. The fact of the matter is, it is not coal land and cannot be considered as coal land, the coal, if any exists, being several hundred feet below the surface. These farms change hands, in fact that is the only land I know of in the New Mexico coal belt that does change hands, and in the sale of the land the value of the possible coal underlying is never considered. The farmer does not consider the coal under his land as of any value. There is a large acreage in Colfax county in this coal belt, which is not controlled by these coal companies that have received attention here this morning. The coal belt extends from the Walsenburg district in Colorado south to the Cimarron district. It is a well known fact that the coal measures are gradually thinning and finally disappears as you come down to the Cimarron. The fact of the matter is that coal in Pennsylvania, Illinois and Ohio occurs in even thickness over large areas of land. You can put down a diamond drill hole every half mile or so and if you find a six-foot vein of coal in all holes you may be reasonably sure it extends six feet all over the area. In the land we control the coal occurs in lenses, the thickest part of the lens appearing at the outcrop, something like a series of small lakes cut right in the middle, the deepest part appearing on the outcrop, the coal lens; it may be several thousand feet in diameter. In some locations we have found after mining a few years basalt intrusive sheets, which has resulted in the mine being abandoned, the coal being absolutely destroyed. We prospected in the next canons and where we should have found coal we found basalt; we put down diamond drill holes in an attempt to extend the life of this mine and find more coal but we found that in an area of 25,000 to 50,000 acres on which we had figured on finding coal deposits, the deposit was absolutely destroyed by volcanic action. I do not want to burden you, but we have often found after going in a reasonable distance from the outcrop, that coal thins by standstone coming in between two layers of coal, and the coal

finally disappears. I know of one instance where we went the length of this room, and the coal from a thickness of six feet went down to the thickness of a knife blade. At the time we acquired this property we acquired mining rights on the 300,000 acres south of the Vermejo river. We have not found any place in probably fifty wherein the outcrop there would be enough coal for commercial purposes. It is possible that somewhere there might be more lenses of coal. But they have to be proven by diamond drilling, and who is going to have the courage to say that such land is mineral land or coal land without first having been drilled and prospected? I do not think that we have in any of our operating mines to exceed 25 years of so-called coal reserves contributary to that one mine. The coal pinches and gradually plays out. You have to pay for the mining plant during that time. Your depletion and depreciation must be taken care of, and your operating profits must take care of new plants to be erected. We have opened up recently a new mine where we had established by a series of diamond drillings coal 3½ to 5 feet thick with the necessity of the construction of a 5,000 foot entry in order to reach that coal bed. We had a great deal of trouble with water but will eventually make a producing mine of it. That mine will have an average coal thickness of 4½ feet. We do not mine anything in excess of that thickness now.

MR. HAGERMAN: Do I understand that along this escarpment from Raton to Cimarron where the outcrop occurs that the coal measures are thicker on the outcrop than back of it?

MR. VAN HOUTEN: Yes sir; the same thing happens in Colorado.

MR. HAGERMAN: Is it because the exploration inland has not been sufficient to determine whether there are regular measures?

MR. VAN HOUTEN: Assuming that you have half the land on your outcrop, there might be beyond a similar occurence but you will be 1,000 feet below the surface.

MR. HAGERMAN: Is it not a fact that the natural place would be near the outcrop on the escarpment.

MR. VAN HOUTEN: That is the reason you find all mining camps on the outcrop.

MR. HAGERMAN: That does not preclude great bodies of coal on other parts of the property.

MR. VAN HOUTEN: Dawson has a more limited area than we have; they have not been able to find a second bed. They will find coal in the proper location, but either burned out or thinned.

MR. HAGERMAN: You say the whole district from Walsenburg to the south thins out as you go south?

MR. VAN HOUTEN: Yes sir. In the district around Starkeyville the coal is more regular and of greater extent than any known coal bed in New Mexico.

MR. HAGERMAN: Suppose that a mine instead of decreasing should rapidly increase, and the available means of transportation should increase, could it in your opinion be made to produce much more coal than it is now producing?

MR. VAN HOUTEN: That would depend upon labor conditions. If labor permitted we could extend our operations. We have 3,000 or 4,000 acres of coal land we have prospected back of our mines. It would take fifteen miles of railroad to reach it. At the present time if we had labor we could increase production in the present operations. Even now there is a scarcity of coal; good coal land is lying idle in sight of the railroad and no one offers to build mining camps. The fact that we are holding some reserves does not restrict the output of coal.

MR. HAGERMAN: As far as labor and transportation conditions are concerned, could the output of coal in that district be materially increased.

MR. VAN HOUTEN: If labor is available we can increase the output; but now we cannot make sufficient volume; we have to have volume in order to make it pay; it is not a poor man's game; it takes a big plant to put coal on the cars at a reasonable price. Coal land is not proven as such until you have actually dug into it.

MR. HAGERMAN: If a large section of this area were in the hands of private individuals, other ownership than yours, do you think the amount of coal produced now would be greatly increased?

MR. VAN HOUTEN: No.

MR. HAYDON: Mr. Magee advocated the appointment of three mining engineers, for the purpose of fixing the valuation of mines. Would that mean that the experts would have to diamond drill the mines of the state? Would there be any other way to ascertain the amount of coal?

MR. VAN HOUTEN: There would be no means even with a diamond drill.

MR. HAYDON: Suppose they could do it with a diamond drill test. How long would it take?

MR. VAN HOUTEN: As an example I may say that we resumed our diamond drilling because in some of our mines we found the coal in sight getting small. It will take us two years to drill sufficient holes in order to enable us to make up our mind as to the amount of coal available for that one mine.

MR. HAYDON: It would take two or three years to test out your land?

MR. VAN HOUTEN: It would be impossible for engineers to test it by diamond drilling; and the expense would have to be borne by the state; we could not afford it.

MR. HAYDON: The Commission appointed would be appointed by the state, and the expense incurred would have to be borne by the State.

MR. VAN HOUTEN: Yes, I do not see how it could be otherwise.

MR. HAYDON: Do you know of any better manner of taxing the coal companies than under the system now used in the state?

MR. VAN HOUTEN: I think that is the only system that can be applied to northern New Mexico coal mines.

MR. HAYDON: Is there any way of ascertaining the value of these lands without making a diamond drill test?

MR. VAN HOUTEN: You cannot determine the extent of the coal land until you drill into it.

MR. HAGERMAN: If it is deemed advisable under any system to reach the physical valuation of the mines of the state as they now exist and in the condition they are now in, would it not be necessary to have the services of a competent engineer to do so?

MR. VAN HOUTEN: If you have one engineer he might arrive at a conclusion; three would never agree.

MR. HAGERMAN: In Michigan there was a physical valuation of the mines, as I understand it, on both coal and copper mines. Are you familiar with the valuation made there?

MR. VAN HOUTEN: No, I am not.

MR. HAGERMAN: I am wondering whether you regarded that as a fair method of arriving at valuation.

MR. SULLY: That valuation was made by Mr. Finlay. His book on valuation of mines has become a standard for engineers, in attempting to figure out values.

MR. HAGERMAN: Finlay is looked upon as a man of high standing, and his valuations considered fair and equitable?

MR. SULLY: It was looked upon by mining men as good an attempt as could be made; but I understand the state of Michigan makes no use of it. If they need a sum of money their method is to call in the copper men and say "We have got to have so much out of you fellows." And to the iron men the same thing.

MR. HAYDON: Are the mining men of this state willing to be called in that way?

MR. SULLY: Practically.

MR. HAYDEN: There seems to be an impression that the mining industries of Arizona are assessed at a higher valuation than in New Mexico, and it has been asked why that could not be done in New Mexico.

MR. VAN HOUTEN: In connection with the taxation on net income, I think if that is attempted you will get in deep water; there will be a tendency to disagreement as to what constitutes net income. Take it especially in connection with depletion and depreciation; you do not know what would be a fair depletion. We are now up against a proposition where we will have to scrap hundreds of thousands of dollars worth of coke ovens.

MR. SULLY: In view of the remarks made by Mr. Magee this statement on real estate transfers may be interesting. It is got out by the state tax commission, and the investigations show certain things in regard to the sale value of rural and urban property, also their assessed valuation. The sale value on rural property is given as $15,466,441, assessed for $8,759,213. The sale value of urban property is

$4,577,513; assessed for $2,513,404. The total sale value is $20,043,-954; total assessed value $11,272,707; and on both classes of property it amounts to 56 percent assessed value.

MR. HAGERMAN: How does the assessed value, in comparison with sales value, in case of the Chino company, compare with the market value as reflected on the stock market?

MR. SULLY: Very favorably. The assessed valuation of the Chino is something like 85 percent; other times the stock quotations fluctuate.

PROF. HAIG: Have you large reserves?

MR. SULLY: We have large reserves.

MR. HAGERMAN: What would you say Mr. Van Houten, in respect to the St. Louis, Rocky Mt. & Pacific?

MR. VAN HOUTEN: I think it is 60 percent on the present basis.

MR. HAGERMAN: That is the present value of the stock. If it is true in one case that the assessed value of 85 percent represents the actual market value, it appears more than favorable with the average assessed value of all property in the state?

MR. VAN HOUTEN: Yes sir. The market value is only an incident, one factor. I do not think the value of stocks and bonds has much to do with the value of property.

MR. HAGERMAN: If there is nothing else we will adjourn till 2:30 p. m.

## WEDNESDAY AFTERNOON SESSION, AUGUST 18, 1920.

The meeting was called to order by the Chairman at 2:30 o'clock. All members of the Commission were present.

The Chairman read the following statement to be made a part of the record.

The main functions of this commission is to formulate a plan for a more equitable distribution of taxes in New Mexico. Everyone, I am sure, agrees that each economic interest in the state should bear its fair share of the cost of government and no more. In the case of the mining industry the precise determination of its fair share has caused our legislators much difficulty. Ordinary standards of taxpaying ability have seemed to be inapplicable in the case of mines, and resort has been had to special standards. We are aware that there exists in the state a wide-spread conviction that in operation these special standards result in a discriination in favor of the mines. It is the desire of the commission to receive testimony at this session as to the correctness or incorrectness of that conviction and to receive suggestions for such amendments to the present method of taxing mines as may be calculated to secure an improved distribution of the tax burden of the state.

Out of the forty-eight states in the American union only eight of which, as we are informed, are now taxed on a basis other than an ad valorem basis, or some adaptation of an ad valorem basis. In a broad way it may be said that a plan for the taxation of mines must rest upon one of three general policies, 1st; on a basis of subsidiation, that is to say, on a basis of granting greater privileges and lesser burdens on mining than on other classes of property. 2nd; on a penalization basis, or a basis imposing more burdens on mines than on other classes of property, and 3rd; on a basis equal and uniform with all other classes of property, those who advocate a theory which imposes an additional burden on mining property, on the ground that the state has some inherent interest in its mining deposist which warrants the imposition of a special burden. There are not, we believe, many advocates of this theory in New Mexico and it may, I think, be eliminated from consideration.

Those who hold that the mining industry should be subsidized usually do so on the ground that the peculiar condition of risk attaching to such enterprise make such a policy necessary preliminary to mining development in a state. Whether or not the risks involved in the mining industry in this state are so manifestly greater than the risks involved in certain other of industries that receive no special treatment in the way of taxation is a subject which the commission would be glad to have discussed today, for we consider the point an important one.

The commission fully appreciates the importance of the mining industry to New Mexico and is eager that its proper contribution to the support of the government shall be exacted in a manner which is not oppressive or discriminatory. It realizes that an unwise decision of the problem before us today would inevitably result in lasting injury to the true interests of the state and it seeks the cooperation of all concerned in the hope of arriving at an equitable and fair adjustment.

MR. HAGERMAN: Mr. Sully of Grant County, the General Manager of the Chino Copper Company, will make a statement.

MR. SULLY: Mr. Chairman, as the General Manager of the Chino Copper Company I am glad to make such statement, but I beg leave to inform you that I am representing something more than simply the Chino Copper Company. There was a meeting of the mining men in Silver City on August 9th, continued to August 10th, at which there were some 35 or 40 representatives of different mining interests in the State of New Mexico. The coal mines were represented. Mr. Kaseman from Albuquerque, Mr. Powell Stackhouse from the Carthage field, also Mr. Gergory Page, Mr. B. B. Hanger and Mr. Hanson from the Gallup field. There were also representatives of nearly every class of metal mine in the State of New Mexico; silver and gold, copper and lead and zinc. Some of them of considerable production each year, others representing lessees working on lands endeavoring to make minerals valuable that have lain idle for years.

At that meeting one of the first actions taken was the appointment of a committee to be present at this meeting. On that committee was appointed Mr. George A. Kaseman of Albuquerque, Mr. E. M. Sawyer, Mr. C. T. Brown of Socorro, Mr. Stauber of Lake Valley, Mr. Robert Kirchman of Silver City, P. H. Argall and Mr. Gregory Page of Gallup, of which Mr. Sully, myself, as an ex-officio member was elected chairman. There are present today with us everybody except Mr. Kirchman and Mr. Page. In that committee are represented gold, copper, zinc and lead, silver and manganese and coal and from operations from a few thousand dollars of net profit a year to amounts running into the millions. It was decided at that meeting that we all had a good crowd, whether we be big or little. The little man hopes to become a large operator and any day the larger operator may become a small one, therefore our meeting was representative.

After going over the preliminaries, the matter of the present statute (Chapter 55, Session Laws of 1915) under which we are assessed, was taken up. It was found that a good many of the mining men there did not know just what the statute covering the taxing of mines, or rather of determining the value at which they should be taxed, really covered.

I have been pretty familiar with the law and with the ideas that prevailed at the time the law passed the legislature. When New Mexico became a state there was a provision in the Constitution that permitted the taxing of the net product of mines—I can't quote it,—amongst other subjects of taxation. Up to the year 1915 the legislature had made no provision for the enforcing and carrying out of such a tax. There were demands made to put on the assessor's books, a net product tax. One such assessment was made in an arbitrary way against the Chino Copper Company, which was resisted, as a matter of principle, not as a matter of dollars and cents, as the sum involved was insignificant.

In 1915, following a general discussion throughout the state, the matter came to the attention of the legislature and as a result I was called to Santa Fe, together with other mining men, to appear before committees of the legislature. When I arrived at Santa Fe, I found there was quite a general opinion among the coal mining companies for a so-called gross value tax in lieu of all other forms of assessment,

the intention being that if you produced a million tons of coal and sold it for $2.00 a ton, that you would be assessed on a basis of $2,000,000.00 in lieu of all other methods of determining value. Now, at the time this matter of a net product tax came up, the mining companies were all assessed in the counties for their lands at the value fixed, I believe, at that time by the county assessors, whether these lands were mineral lands, grazing lands, agricultural or orchard lands, the mineral land valuation applying to patented mining claims. Since 1915 the State Tax Commission has endeavored to equalize and fix the values of grazing lands alone. For instance, the grazing land in certain parts of the state are assessed at $2.25 an acre, other parts of the state at $3.00 an acre and I believe in one county they are assessed at $3.75 an acre, these values being fixed on the basis of the investigations and decision of the State Tax Commission. If any lands held for water supply or mill site purposes were agricultural, they were put on the assessor's roll at the values established by the taxing authorities. In addition to the tax on the surface values of the lands, all other property (personal and improvements) owned by the mining companies went on the rolls at its value as determined by the assessor, or as should have been determined by the assessor. Consequently every mining company was paying a value for its mill, a value for the houses it had for its employees, a value on any pipe lines, railroad tracks, in fact everything that enters into the operation of its mining and beneficiating plants, but no value for its mineral output. At that time the value fixed for mineral lands, which would be your patented mining claims, was in our county (Grant County), $45 an acre, other counties $60 an acre, and that value was applied to the mineral lands.

When the matter came up of the gross value in lieu of all the other values above stated, I considered it from a personal company point of view. It appeared it made no difference whether one took the gross value of our product in lieu of all other values whether one adopted the other method of surface values, personal property, improvements and net value or profit as a measure of the mineral value of the lands. It so happened that the spread between our costs and our sales price added to our property values would equal practically the same figure as the gross value received for our product. But at the Mogollon mines in Socorro county, producing principally silver with some gold, taxes on the gross value method would have resulted in absolute confiscation of the properties. The tax that would have been assessed against them on that basis would have been more than the spread between their costs and receipts for their product. The total received for their minerals was so much greater than the spread (net profit) between their costs and receipts for sales of silver and gold plus their mining claims, personal property and improvements that while they could operate under the net profit method of valuation they would have to go out of business under the gross value method. There was a good deal of discussion pro and con about this matter; a great many figures were discussed as examples, with the result of all the committee work and study of these various conditions that the net profit basis of the present law was decided on.

Now in the present law there are made two classes of mineral lands, distinctly stated, Productive and Nonproductive. These nonproductive lands are assessed in the county where they are located at the value fixed by the County Commissioners—so far I do not think the State Tax Commission has ever taken this valuing into their hands

—and are assessed on the rolls at that figure. In addition to that the law provides that non productive mineral lands, on which they pay in Grant County $45 an acre, shall also be assessed at their surface value. i. e., grazing lands or whatever class of land it is. Now in my own experience I did not really appreciate this fact until just about a week ago and I do not suppose there is a county assessor in the State that has grasped that reading of the law,—that for nonproductive lands they shall be assessed at their surface value and also at the value fixed for nonproductive mineral lands, which, as I say, in Grant County is $45 an acre, other counties $30. I think in Colfax County the mineral lands are $60; McKinley County I think are $29 an acre. Then in addition to the nonproductive mineral lands there is a special provision made for determining the value of the producing mineral lands. Now for determining this value certain reports must be made to the State Tax Commission, with which forms this Commission undoubtedly is familiar. The law provides the method for calculating this value which is based on the gross proceeds of the mineral product less certain expenses, but does not include all the expenses that the federal government recognizes. In the first place depreciation and depletion are entirely excluded. In the second place every item of expense connected with the New York or other office away from the property is excluded, the intention being to only allow those expenses that are directly connected with the operation on the property in labor and supplies, or directly connected with the final saleable product. Taxes, insurance and interest are excluded, and it is on just about as hard rock bottom basis as can possibly be. I have to state my experience in the operation of this method prescribed by the state law and interpreted by the Commission, to results of the Chino Copper Company operations, because I am familiar with these figures and have them immediately at my finger ends. But, essentially, the difference between the net income that would be reported to the Federal Internal Revenue Department and as applied under the State's rules would be something between two and five million dollars a year. For instance, when we paid the Federal income tax on a basis of six or seven million dollars a year, our "net profit" as allowed and accepted by the State Tax Commission would be in the neighborhood of ten million dollars, showing the amount of expenses which have been allowed by the U. S. Government but eliminated by the State Tax Commission, but which, nevertheless, the company has to pay out of the earnings of its property. However, that is, from the State's point of view, considered a fair proposition and is in accordance with the law.

Now I think I have pointed out that in addition to the valuation of the mineral lands including as contiguous and forming the mining property, one pays the surface value of the ground, so that in figuring out the total amount that the producing mines of this State are assessed (I object to the words "what they pay" because we happen to be in Grant County where the tax rate is comparatively low and we might have property in another county where the tax rate is high, so that the tax we pay is not representative of our proportion to the total value of the State), this is one item to be considered. In considering what the mines are assessed, you have the item of the surface value of the mineral lands and other lands held for milling and for your camp purposes, water supply and tailings disposal, and, in addition, have the net production, which represents the value of the mineral lands in addition to the surface value above stated, and also the personal property and the improvements. That covers the items

that every one else pays on in the state, arrived at, as nearly as possible, at the full value.

In the Tax Commission's various printed reports, which are full and very carefully made out in most particulars, I have failed to find a list of the producing mines of the country where all of these values are segregated together. In one publication (Second Biennial Report page 99), they gave for the State the agricultural lands for each county, their assessed valuation, the valuation per acre, similarly the grazing lands, timber lands and also for nonproductive mineral lands. In that table there is no setting forth of the average value paid for producing mineral lands and it is no wonder certain members of the legislature thought the operating mining companies escaped.

Now I have some tables that have been made up as accurately as possible in the time available, from the data accessible for the years 1918 and '19. In the first place I might say that for 1918 I found there were thirty-three producing metal mines reported and twenty coal mines, making a total of 53 mines reporting throughout the State as producing mines. (Tables submitted).

Now for the year 1918 there were Colfax, Sierra, Santa Fe, Socorro, Eddy, Luna, Lincoln, Dona Ana, Otero, Grant and Torrance counties reporting metal mine production. According to the returns there were 17,301 acres of mineral lands included in those returns. The net profit upon which the mineral values of those lands were to be assessed amounted to $9,659,116 or the equivalent of $558.36 an acre. At the same time the surface and other lands held for tailings, water or camp purposes amounted to 306,639 acres, which, according to the values fixed by the State Tax Commission, or the local assessing officers, amounted to $1,075,139, or the equivalent of $3.56. As to most mineral lands, as well as the other lands, the surface values are only good for grazing purposes, and the above figure is about the average value of grazing lands. On that same acreage of 17,301, the improvements and personal property were assessed at $9,483,834 so that for the year 1918 the total assessed valuation against the producing metal mines of New Mexico was $19,196,379, while for the same year the coal mines show a total assessment of $3,676,099. The grand total for all producing mines being $22,872,478. The year 1918 was not as profitable for the mine industry as 1917. It was below the average for the three years '16, '17 and '18.

Now for 1919 there was reported only 14,694 acres of producing mining lands. The net profit assessment for the appraisal of the value of the mineral in those lands was $12,678,315. The reason for that increase over the previous year was due to the averaging over '16, '17 and '18, the years '16 and '17 being more profitable. This averaging gives a value for those producing mineral lands for this year of $901.79 per acre. At the same time there was an assessed valuation on surface and other lands of $1,262,422, or an increase to $4.27 per acre. The improvements and personal property assessed as against producing mines this year was $10,657,165, or a total of $23,925,000 plus a few odd hundred.

Now I am sorry to say for 1919 I haven't the total mineral production of the State of New Mexico, but just as I reached here I received a pamphlet published by the United States Government that showed the copper production for the State of New Mexico was sixty million

pounds for the year 1919. I haven't with me the exact data as to the average value of copper quotations during the year 1919, but it is my recollection it was a little over 18c throughout the year, so that 18 times 60 is a total gross value of copper production in the State of New Mexico for the year 1919, amounting to about $11,000,000.

Most of these mines reporting are copper mines. The zinc mines were sadly handicapped during the year, in fact I don't think they operated a third of the time. It was impossible. The copper mines kept operating, doing the best they could. One of the largest, the Burro Mountain Copper Company, was obliged to shut down and make some improvements during the year, in order to be able to operate with any profit. Another large producer, the 85 mine, in what is now Hidalgo County, was able to keep at work, owing to certain peculiar conditions. The assessed valuation of the metal mines of New Mexico for 1919, was nearly $24,000,000 and the gross value of their product was but little in excess, if any, of $11,000,000.

At the meeting held in Silver City, after going over the mine tax law, every man there was asked to express his opinion—wasn't put to a vote—every man there was asked to express his opinion about what they thought of the present method of determining the value of the mineral lands of operating mining companies in the State of New Mexico. In the first place, whether it resulted in a fair valuation as compared with other properties, second, as to whether they believed it contained a basis that would be fair for future conditions. Every man present expressed as his belief that it was the most equitable way of determining the valuation of the operating mines in New Mexico. While in some cases it worked an injustice, possibly, against one or another of the properties, on the average it was as fair a basis as could be obtained. They did not pass a resolution to this effect, urging the continuance of the present law, because the sentiment of the meeting was, that the mining interests represented, desired to pay their fair share, and if in the judgment of this Commission or the legislature it was not fair to other property holders, that they were glad to enter into a conference to discuss the matter with a view to determining such changes as might be necessary to make it fair. That was the attitude of the meeting and that was the attitude in which I came here expressing their opinion and also my own. Not only is this the consensus of opinion of the men of the meeting, but it has been my opinion for a long time.

The law as it operates today, as it exists on our statute books, is practically similar to the Utah law, which has not been changed for many years and which seems to be satisfactory to other taxpayers of that state as well as to the miners. There is this one difference, unless it has been recently changed, between our law and the Utah law, in that the Utah law allows from the net profit that sum of money which you may use during the current year in building a new mill, buying a new power hosue or other improvement expenditures, etc. If your product is worth a million dollars and you find it necessary to spend $250,000 for additional machinery, they will allow you that from the million dollars, making it $750,000, but they expect you to put that improvement in your property return. As the New Mexico law operates, all such expenditures (so-called capital expenditures for improvements) are added to the value of the property each year, no deduction being allowed, and the mines are really double taxed on

that one sum. I do not know generally how other mining companies handle the matter of making returns, but one or two that I am familiar with add to their previous assessed valuation each year the sum of money spent in such improvements.

We do not like to make comparisons, because we have no quarrel with other taxpayers in the state, and do not wish to be critical, but we do wish to state this, namely, that mining companies are in such position that the law obliges them to open their books for inspection as to what they are doing and have done. Aside from legal requirements I do not think there is another industry or business in New or the whole United States that makes public all their operations to the same extent as do the operating mining companies. Most mining companies publish quarterly reports showing the results of operations. All of them, and especially copper companies, publish annual reports in which a great many details are set forth and these reports are discussed in various publications. If we wanted to avoid investigation we couldn't do it. The Tax Commission has full authority to come to the headquarters of mining companies and examine all the books of accounts. Ever since this law has been in effect there has never been a year but what we have had a representative of the Tax Commission call at the office where the general books are kept and examine them for the purpose of verifying the returns.

MR. HAGERMAN: As far as the Chino Copper Company, for instance, is concerned, it can be considered as a unit, the value of which can be definitely determined more clearly than most other kinds of mines, can it not?

MR. SULLY: Yes, sir.

MR. HAGERMAN: Because of the fact that the deposits are known and have been prospected before the development has been commenced. I mean, it is on a different basis entirely from the indeterminable coal deposits?

MR. SULLY: All of the Chino Copper Company mines have their ore reserves so developed that they are determined as far as a human being can determine them. This was necessarily so because the equipment necessary to an operation in moving considerable tonnage of low grade material requires considerable expenditure of money, and before that money is expended you must see the other end of the line, that there is sufficient ore to return the capital expenditure. There were three or four years spent in drilling, systematically drilling, the many ore bodies of the Chino Copper Company. Within one year of the beginning of drilling there was consideration of putting in a mill to handle a thousand tons of ore per day. Before the plans could be made for this unit there was justified a mill capacity og 2,000 tons per day, because the drilling development showed we had sufficiently bigger tonnage. Before those plans and material were ordered we had gone to a basis of 3,000 tons. Before the 3,000 ton per day mill was finished, 2,000 tons per day additional had been authorized. All of this expansion being justified by the development work, which permitted the close estimation of the ore that could be handled.

MR. HAGERMAN: I presume that you know fairly accurately now what would be the life of the mine on the basis of its present tonnage production?

MR. SULLY: Yes sir, but we have not determined this life on the present tonnage production but on the possible tonnage production of our mill. Since the first day of January, 1919, we have been running on about half production. The life of the mine is one of those difficulties that come up with our Federal Income Tax returns. However, the Federal Government allows you in making figures, to base them on the capacity of the plant with a minimum amount of difficulties. On that basis the life of the Chino Copper Company will be 25 years.

MR. HAGERMAN: As far as arriving at the capital value of a mine like the Chino therefore is concerned, it would be much simpler after reaching the state of development you have reached, than in the case of gold mines or other metalliferous mines?

MR. SULLY: Well, metaliferous mines in limestone country or on veins find that their ore bodies are apt to be restricted, very uncertain, and not amenable to the same method of drilling development. They have it today and not tomorrow. One of the great difficulties the Federal Government has had in determining what the ore reserves for depletion purposes are in mines of this character has been because it is impossible to drill them as we have drilled our ore bodies at Santa Rita and get results that are reliable or even get any results. Most mines have possibly only a few days ahead of ore. They are mostly absolutely dependent on what is just ahead in the veins. I worked in the Missouri zinc districts for a long time (I think a lot of my gray hairs came from there) and we would be very happy one week at the prospects ahead, the next week we would see nothing. One of the things that impressed it on my mind that we are going to have steady operation was the spending of money to develop in order to be sure of what we were coming to year after year as far as such things are possible.

MR. HAGERMAN: In connection with the mine tax law as now on the statute books, passed at the last regular session of the legislature, which was virtually a compromise, could you tell us a little more definitely what the circumstances were that led up to that legislation? Was it merely as a temporary compromise, or makeshift, or what was the idea?

MR. SULLY: The idea was purely and solely a temporary makeshift to tide over a trying period. The idea originated purely and solely out of the necessities of the State. In 1919 at the time the legislature met, conditions had come to such a point that it was evident to the legislature and the state officers, as it was to the mining men, that a greatly reduced metal mine production particularly was imminent. The state had commitments, the counties had commitments; levies had gone through and the thing being put squarely up to the mining men they agreed to the averaging over the three years in view of the conditions, so as to average up the income of the state and not all at once drop that large amount of money which the state would receive and put them in an embarrassing condition. It was believed that after 1920 conditions would again be normal. That is actually the way the thing came up in the state. Further there was little idea as to what could be done in the way of a new law and a special commission was advised.

MR. HAGERMAN: Was the conference of mining men fairly

representative of mines of various classes at the time that arrangement was effected?

MR. SULLY: Yes, sir, I think so.

MR. HAGERMAN: In connection with the possible income tax which would affect mines as well as individuals, and other corporations, if it was decided wise to adopt that kind of tax, do you think it would be wise to have the product of the tax go into a special state fund, or would it be wiser to divide the product between the various taxing districts as the product of the general state and county taxes are now divided?

A. That is, should the state be the recipient of all the mine tax to the exclusion of all counties?

Q. No, of all the income tax.

A. Of an income tax?

Q. Which would be applicable to the mines as well as all other taxpayers on the lines that we have been discussing the income tax?

A. That is an income tax in addition to the present tax?

Q. Yes.

A. I don't see how you could divide an income tax very readily among the counties.

Q. It would be difficult to do so?

A. It would be difficult to do so as that collection of such tax is within the power of the state. There has been no grant of the right of collecting such a tax to the counties.

Q. There has been a discussion as to what would be the best use of the money so raised. If, however, some different method of taxing mines were decided upon other than the present method, which would raise the assessment on mines in some degree perhaps, is it not probable that the rates in a county like Grant would be very materially decreased on an ad valorem tax because the great increase of the value of property would correspondingly decrease the local rates to a great degree, so that the decrease in the tax burden of a large taxpayer would not be as great as at first apparent?

A. That is absolutely the fact, Mr. Chairman. When this law went into effect in 1915 and at the same time the state went from third valuation to full valuation the result in Grant county proved your contention. Grant County in 1914 was something like 33 mills on the third valuation. In 1915 our rate was reduced to about 9 mills, owing to the coming in of this net profit of mines. That would also happen in the same way if you can get all the property that is in that state subject to assessment on the rolls, the rate would be decreased to those who are paying now.

QUESTIONS BY PROFESSOR HAIG:

Q. Do I understand you, Mr. Sully, then to believe that at the present time the taxes which the mines pay do bear an equitable proportion to their taxpaying strength as compared with other interests in the state?

A. Professor, as far as I have been able to look into the matter, but it would require weeks of close study to be sure, they do.

Q. Do you think they pay more than their share?

A. I am not prepared to say that. In some ways it looks as though they did.

Q. Do you think that if, as a result of the recommendation of this Commission, or as a result of increased standards imposed by the State Tax Commission, the general level of values of property generally throughout the state should be increased, say 25 percent, that would mean that certain items now taxed to the mines would be increased and its net output factor would not be affected by such increase, would it be necessary to make an adjustment to preserve equality, if you have equality now?

A. I think so. There is one point about this net profit basis which came out in the matter of coal mines. This law, as I view it, makes the State a partner in every operating mine. The State is interested in seeing that that mine is operated in the most economical manner. Also, if there is a year in which that product would come out at a loss, that this State doesn't want to see that product come out. If we take metal out of a mine this year and make nothing on it, the State gains nothing and it would be better. from the State's point of view, wholly and solely taxing point of view, that the mineral be saved until it can be taken out at a profit. That mineral is always there for the State's benefit, if not in this generation, then in another generation, when it can be taken out at a profit and while you are exhausting that particular mineral at the same time the State, under this law, will eventually get their money from it.

Q. By the way, does the discovery value factor enter into your case?

A. No, it doesn't. It may enter in later.

Q. In case the suggestion that has been made that an income tax be established is adopted by the Commission, what do you think would be a fair basis for depletion in the case of mines? Supposing it be a net income tax in which mines were to be allowed to make a deduction for depletion, what date do you think should be selected as the date on which the valuation should be made for the purpose of the calculation of depletion for the purposes of the state?

A. Well, the first thought that occurs to me on that matter would be to fix such standard as would involve the least amount of work, because there has been such a tremendous amount of work and tremendous amount of money spent on it already by operating companies in connection with Government returns.

Q. Do you think it would be unacceptable, to deplete on the basis of original cost, even though the property was acquired before March 1st, 1913?

A. No.

Q. It would not be unacceptable.

A. No.

Q. As a matter of practice in the Chino mine do you people keep out of the earnings a fund with which to buy new reserves?

A. No, we have not.

Q. That is, you are distributing your depletion funds?

A. We are distributing our depletion funds. In fact, to continue any dividends at all we have been obliged to do it.

Q. In general then you feel—

A. One of the members of the Commission asked me about that point the other day coming on the train. Because when a dividend is declared the statement is made in the quarterly reports that we cannot yet state whether this is distribution of capital or distribution from earnings of our copper companies.

Q. Well then, so far as metalliferous interests are concerned you have absolutely no suggestions to make for any changes in the present law. You are quite content to allow it to remain as it is and wouldn't object to the addition of an income tax law applying to mines?

A. I don't see why they should apply an income to mines distinctly and not to the rest of the businesses or taxpayers of the State.

Q. Oh no, I mean of mines in company with all other business interests in the State?

A. We have no objection to an income tax law. At the last session of the Legislature we did object but to some of the provisions and lack of clearness in the one that was passed, that was all. Those who studied it didn't see how you could get a practical application of the income law as passed.

Q. One other thing, Mr. Sully. Are conditions in this State in the metalliferous mines in any way peculiar as compared with those of surrounding states in that a larger initial expense is necessary or some larger initial risk undertaken by a mining venture in this State, or are conditions fairly homogeneous over this territory?

A. The conditions are fairly homeogeneous as to present operations but a lot of undeveloped metal mine territory at the present time in New Mexico is far from transportation. Take down in Socorro County there are a lot of showings of mineral land, some very good mineral is obtained, but it is so far away that the best of the properties can only operate under the most favorable conditions of prices, owing to transportation problems. Further than that, there have been so many "wildcat" mining schemes in the State of New Mexico that people are more cautious about coming into New Mexico than they would be into Arizona. I remember when I first came to the State to look at the Santa Rita property and go to work there I was laughed at by a considerable number of my mining friends and when I thought I had seen that there was something at Santa Rita I was laughed at still more. In the case of the particular Chino Copper Company property and the Phelps Dodge property, operating today, they have tended to give the State a new name so that other corporations are coming in and the State is gradually building up a reputation of actually having some mines. There is still, in my opinion, large bodies of ore in the State of New Mexico that only need proper development to be added to the list of producers.

Q. Has there been a fairly good survey of the whole now and have most of the good deposits been ascertained? What is your guess about the mineral deposits of the State? Have you just scratched the surface or have you pretty well blocked the thing out?

A. Well, I have spent a good deal of time going around looking at one place and another, and I believe that the New Mexico development is not commensurate with Arizona development. New Mexico should have four or five or six or possibly ten other operators of the size of the Chino Copper Company. It will take time and patience, and somebody will have to take the risk of demonstrating that.

Q. Can you give us any idea of the proportion of the total mining industry, metalliferous mining industry, represented by developments of porphyry mines as compared with other types?

A. No, I cannot, right off but I can give, possibly, something that may convey the same thought. While New Mexico's production for 1919 was about sixty million pounds of copper, Arizona's production was about 540,000,000 pounds of copper.

Q. Is your mine practically one of the large corporations in the State?

A. The only one of that particular (steam shovel) type. Over in the Burro Mountains the Burro Mountain property of the Phelps Dodge Corporation has a large porphyry mine which is in process of underground development. Those are the two biggest operations in the State of New Mexico.

Q. Do the two of them together, do you think, bulk as large as the rest of the metalliferous mines in the State?

A. I will refer back to this statement I have here. For the year 1919 the total for the state was $23,925,000, plus. That is the total for the State of the producting mines for the State, metal mines.

Q. Total net output?

A. Total assessed valuation. That includes the output. Of that Grant County had $22,704,000. The Chino and Burro Mountain properties were assessed alone over $20,000,000 of that sum.

MR. HAGERMAN: Mr. Sully, if you know and care to tell us, could you give us roughly a comparison of the tonnage of the Chino, the Ray Consolidated and the Utah Copper Company, and the comparative amounts of taxes paid per unit in the three states on those various properties?

A. I can give it to you roughly for 1919, but not exactly. We had an Arizona bulletin and we were comparing. I was quite curious to see. I used the Ray, although there is a full list of all other mining companies. As I remember, my figures may not be exactly right. Mr. Ellinwood will be entirely familiar with the pamphlet. There are some 43 large mining companies, most of them as big as the Chino, and some of them a great deal bigger, some of them smaller, but all of them, probably, not smaller than the operations of the Burro Mountain Copper Company at Tyrone at the present time. Now amongst those companies of course my eyes were attracted to the Ray because we are close in relation, in a way, through having the same managing director.

They were assessed on the Arizona basis at about $48,000,000. Well, now, in the same year, same comparison, Chino was assessed at about $18,000,000 in this State. Now the invested capital of the Ray Consolidated Copper Company is nearly twice that of the Chino Copper Company. Taking that as a basis, under the Arizona law we should be assessed at $24,000,000, whereas under the law as in effect here why we reached $18,000,000 so we are not so very far off.

Q. How about the production?

A. The production is somewhat gerater. The Ray Consolidated is very close to our net income. I am going back now to the Federal income tax for Federal returns. Their income would be about a million dollars a year more than the Chino's. I noticed that because in paying the Federal income tax the Chino paid $600,000 more than the Ray Consolidated Copper Company did, due to that very matter of invested capital mentioned above.

MR. HAIG: Under the excess profit statute?

A. Yes, under the excess profit statute the Chino actually had to pay $600,000 more than the Ray where they made a million dollars less than the Ray Consolidated Copper Company. After the hearing held in Washington the Chino was able to make such showing that somewhat equalized that difference.

MR. HAGERMAN: What was the production in pounds of copper, do you remember, that year?

A. No, I do not, Mr. Hagerman, I can't give you that data. If there is any information which you desire and will give me a memorandum, I will be very glad to furnish it to the Commission. There are so many figures that I just picked out those that impressed my mind most and held them. I cannot hold all the details.

MR. HAGERMAN: You don't happen to know by comparison what the production and assessed valuation and taxes paid of the Utah Copper Company was, do you, for the same year?

A. No.

MR. HAGERMAN: In a general way is it true, as has been claimed by certain writers in New Mexico, that the amount of taxes paid on the Ray Consolidated in Arizona is so grossly out of proportion on the same unit basis as the taxes paid by the Chino in New Mexico?

A. In Arizona it is equivalent to 1.17c per pound as against the Chino's .993c a pound.

Q. In regard to your Gallup properties in the coal interests there, have you anything to add to what has been said this morning in connection with the whole problem of taxation of coal mines?

A. I think the subject was pretty thoroughly covered but if you will be kind enough to permit me to make a few remarks I would like to state this; although it is not a problem for the State or taxing authorities at all, but in the matter of our holdings in the Gallup fields, which were obtained to help assist in the operations of the copper mines, owing to certain conditions last year we had an operating loss which was paid by the three holding companies of $260,000.

MR. HAIG: Was the product disposed of to the Copper Company?

A. Only in part, the larger portion going to the railroad company, also some to the public, but at times practically all of that part was confiscated by the railroad company.

Q. The coal company is operated by the same corporation as the Chino?

A. No, a separate corporation but I happen to be in charge of the Coal Company. Our prices for the sale of coal were those fixed by the Fuel Administration. The copper companies pay the same for their coals as anybody else does, just the same as the railroad companies buy their coal from it, on acontract basis, and all the sales were made under the Fuel Administration sales price. We paid a loss of $260,000 but at the same time we paid taxes on a net profit of $252,000, that being done by the use of a little lead pencil business.

Q. You mean to the State?

A. To the State. Now there is no complaint about that because we submitted without question to it because we received the protection of the state. There is another table that I find here that is interesting in this. It shows that for 1919 the gross value of the metal mines, I presume of the metal products in the State of New Mexico, was $10,900,000 and a few odd dollars, just using even figures. The gross expenses reported was $11,011,000, leaving a loss on the mineral output $111,101. The assessed valuation against that was $12,734,678 so the metal mines actually had a loss.

Q. That was in the year of depreciation?

A. 1918.

Q. 1919 was somewhat depreciated too?

A. 1919 was somewhat depreciated too. I think the records of the Tax Commission will show the net profit of our company as determined by them was a little over $7,000,000 for 1918 as against about $12,000,000 for 1917 and $2,100,000 for 1919. The actual net profit assessed against our mineral lands for 1919 was over $10,000,000.

Q. Do you think, if the present method is continued of including the element of value in the assessment, that it would be desirable to work out some system of averages? That is, to base the annual assessment on the average of three preceding years? That is, perpetuate this compromise agreement?

A. Thank you for the question, Professor, I was about to forget a point that came up in the miners' meeting at Silver City. That has been my idea. It was also Mr. Sawyer's idea of the Burro Mountain Copper Company, and it was freely discussed in that meeting. Now that might do for the Chino or the Burro Mountain Copper Company and other operations that have a large amount of ore reserves, invested capital and borrowing power, or whatever you want to call it, so that they can go on, but you take the man who is getting manganese ore over around Silver City or who has revived the Lake Valley mines in Sierra County and is getting out manganese ore and trying to realize on some old discarded silver ore, without ore reserves, much equipment, and comparatively small working capital—

Q. He would be paying taxes long after he has gone broke?

A. Yes, after he is broke and out of business. These mines today are facing a crisis with this increase in freight rate. Mr. Porterfield of Silver City, who is shipping seven or eight cars of manganese ore to Chicago a day, used in making manganese steel, has a freight rate from Silver City to Chicago of $6.30 a ton. His margin of profit will range from a dollar to $1.17 by the closest economy and attention on his part to keeping expenses down. Now that 33 1-3 freight rate raise (one-third of $6.30) is $2.10 and what is Mr. Porterfield going to do unless the Steel Company, or whoever he sells to, will absorb that raise? Otherwise he has got to stop right now, (thus throwing out of employment quite a number of workers) until he can appeal to the carrier. The carrier can take up his case and consider it, passing it on the Interstate Commerce Commission, who, according to the ruling in ex parte 74, may not grant it, although as is indicated in that case, it may make adjustment. Mr. Stauber at Lake Valley had the same problem exactly but the people he was shipping to have been kind enough to absorb the increased freight rate until such time as they can get their own adjustment on it, but otherwise there would be two people who are doing good work in developing the mineral resources of New Mexico put out of business right now. I don't think the State wants a law averaging over any period that will penalize those two gentlemen by endeavoring to assess a tax against them after their efforts are thwarted by conditions beyond their control.

MR. STAUBER: If any differentiations could be made and no taxes collected from a man in the year when nothing has been made, would that be practical do you think? You never could tell, though, when they would start again, that is the trouble.

A. No, you have got to insist on those reports. You see now if you do not operate in a given year you go back into the nonproducing class in which, if you fix the matter correctly, the State can still obtain a revenue through the State Sax Commission fixing values for nonproducing mineral lands or, as it is now, left to the county commissioners. Now the county commissioners of Grant County have those nonproducing lands at an assessed valuation of $45 an acre. Some other county may think it should be $60.

MR. HAIG: Does this contiguous property clause enter as a factor of any importance in your Gallup developments?

A. We have there something like 24,000 or 25,000 acres of coal land. Of that we only know of workable coal for certain on about five sections, though the rest of it is within the coal area, but it was absolutely necessary that we spend something like $95,000 in putting down diamond drill holes before we dared undertake putting down a shaft. With the diamond drill we usually get out a coal core that gives the most accurate idea possible of the character of the seam, but many times while from the drilling operation we know we have gone through a coal seam of a certain thickness we do not know whether or not it will be a workable coal seam when we actually open it up, so that even by expenditures through diamond drilling there are some chances that have to be taken. In order to reach the coal seams we have to put down a 750-foot shaft on the above five or six sections.

Q. Could you make any suggestion to the Commission as to what limitation ought to be placed on reserves attaching to a particular mining development? Do you think there should be, in coal mines in

particular, do you think there should be any limitation upon reserves under this contiguous property clause, or if you do thing there should be a imitation, what should it be?

A. We had some discussion on that with the coal men at our meeting and we could come to no conclusion.

Q. Could you state some of the views advanced, for our enlightment, or would you prefer not to?

A. Well, we held that meeting down there in all honesty of purpose. The suggestion was made, although it was not agreed to ,that inasmuch as the United States Government has fixed 2,560 acres, or four sections, as the holding that you can lease or, under the old law applying to Alaska, that you could purchase, I think the same figure applies to oil lands, possibly some such principle would clarify this criticism, this objection to so-called contiguous lands, aid the State authorities and remove from the Legislature and Governor all implication of having a law in the Statutes that was not just. I am frank to say that under conditions existing in the Gallup field I wouldn't like to undertake the development of a new mine with only four sections of land. As near as I can make figures on it, and I am pretty well in the habit of making such estimates, it should be six sections, or something like 3,740 acres for each operation.

Q. The meeting, however, was not prepared to make a definite suggestion?

A. No, it was not. There would have to be many other factors to be considered. Before that meeting of mining men it was also suggested that in case of metal mines a less area might be adopted than for a coal mine.

Q. Would you be willing to undertake the development in the Gallup fields on the basis of six sections ?

A. Yes, sir.

Q. Is the Gallup field similar to the field that was described this morning in regard to mining conditions, or have you a more continuous vein of coal?

A. No, we have the same conditions . If I had known that these questions of coal occurrences would come up I would have been very glad to have brought you down some sections to show you the uncertainty of identifying the seams of coal and tracing them out from one drill hole to another, even when one has the technically accurate records that have been kept of the drill holes put down on our property.

MR. HAGERMAN: Is coal mined on the outcrop on the side of the escarpment?

A. Yes, sir. That is, practically all of the valuable outcrops of coal in the Gallup field that are on our coal land holdings have been opened up. Some of the openings have been abandoned for years so that there is really no outcrop available for new workings. You have got to go out and go into the beds by deep shafts, undertaking an expensive development to get to the coal that lies in the basin. There are in one or two instances on other than our lands outcrops where smal operations could possibly be carried on.

Q. Has your diamond drilling revealed a phenomenon similar to that described this morning whereby in the basin the coal narrowed out?

A. Yes, sir, the coal thinned. That is due to a geological condition. There is a geological reason for that phenomenon. The shrinkage of the earth caused folds in the earth's crust. I will take one of these books (indicating) and by opening, allow it to make a fold in the pages. You will notice that there is a widening of part of the leaves at the top of the fold and spaces between the leaves, whereas at the edges of the leaves or at the binding, there are no spaces. Now the strata that forms the earth's crust are not flexible, as are the leaves of this book, so that instead of folding over like that leaf does, cracks develop. Further, when the folding took place, the coal, as well as some of the rock strata were in a placid or soft flowing condition, so that at the top and on the slopes from the anticlinal fold, the coal fills up the larger spaces near the top of the anticlinal fold, due to the greater pressure exerted on the lower parts of the fold (illustrating by use of book), then, on account of the fracture of the rock strata at the top or near the top of the anticlinal fold, erosion due to precipitation starts, first exposing the various rock strata as erosion proceeds in the form of outcrop, possibly of an escarpment. As has been pointed out, the coal is thicker near the top of the anticlinal fold, so the seams which are exposed by erosion will be found to be much thicker than further away from the center of the anticlinal fold. There are of course, many variations that arise from these conditions of stress of the earth's crust, but the illustration with this book is sufficient to show the general conditions that exist in the Raton fields as well as in the Gallup fields. The variations from the outcrops in the Gallup fields are mostly through the slope driven down one dip of the anticline. The coal shows very good at the surface and the beds having a dip of angles from four to fifteen degrees, as you get further and further from the outcrop there is a gradual thinning out of the coal as the slopes approach the basin or bottom of the fold. Two of our slopes approaching the basin or bottom of the anticlinal fold are having the greatest difficulties through the character of the coal and the changed character of the top, part of it due to the increased amount of water that is encountered at this low point.

MR. SIMMS: Would your estimate of this section contemplate a future supply of ten or 25 or 50 years of coal of that project?

A. As I remember, my figures would give us between 20 and 25 years of life. The investment to equip that mine for a life of 20 or 25 years is going to require funds for sinking of two shafts about 750 feet, the hoists, tipple, power plant, houses for working men, and water supply, amounting to pretty near a million and a half dollars. We hope to be able to make enough out of the coal to replace this sum in the 25 years. After that time we would have to pick out on our other lands a new place for operation. The reason I selected six sections is because that would contain a quantity of coal that you could get readily from centrally located shafts and get out in that time without further investment. When you went beyond that area you would begin to run your costs up so that it would be an economic loss to attempt to go any further with the equipment.

Q. Your estimate was, then, about 25 years for each individual project?

A. Yes, sir.

MR. SPRINGER: Six sections in operation of 25 years?

A. Yes, those were the figures I made in trying to outline a plan to carry on the work. There are also various difficulties in the Gallup field that bring on other problems. At the present time we are pursuing the policy of granting permits to anybody that cares to lease any of that land and who has a reasonable chance for making a profit from a small operation, and we are not standing in their way. We are glad to lease it to them because the Gallup district should produce coal. We don't want to be in the position of having something there that others can make use of and holding them off.

MR. SAINT: Do you apply any factor to cover your cost of equipment and development?

A. Why we always set up on our books an item of depreciation in making Federal income tax return, they require that it be set up. We set up every operating expense.

MR. JOERNS: What would be the value of the acreage beyond the six sections of coal land in excess of six sections? Would that have any value as undeveloped coal land?

A. Well, as we discussed it this morning, that is open to very wide discussion of whether it has or not. I was very careful to make sure that the five or six sections just mentioned were drilled before I would even recommend taking the first step towards development. The area covered by your question has a surface value for grazing, but in my opinion has no especial value as undeveloped coal land. On some of that land we would have to go down one thousand feet or more, in fact up to 2,000 feet to find out whether there was any workable coal. In the Gallup field there is what is commonly termed upper and lower measures of the Mesa Verde. There is a space of 450 feet between the lower seam of the upper measure and the upper seam of the lower measures. From all our drilling operations and all the outcrop investigations it is absolutely impossible to tell a half a mile away from an outcrop whether the coal seam you are looking at is the same one you saw half a mile back. Even the diamond drill holes which have been put down about 2,000 feet apart, why it is practically impossible to identify the seam in one hole with a given seam in another. There is one seam in the district that has a thin band of sandstone a few inches from the top. Where that is found we aways call it that particular seam, but when the record of another hole a thousand feet away is examined and a coal seam in the proper horizon is shown, that does not have the sandstone band, but does show a thicker bone coal band, one is not sure, especially as there is liable to be a considerable variation in thickness.

M. HAGERMAN: May we have copies of these statements of yours to put into the records?

A. Yes, sir. This last statement, if you are through with this other line of questions, was made up from available data including the nonproducing mineral land with the producing, also includes the coal data for 1919. I read you the metal mine statistics, showing a gross value of output of $12,734,000, but an actual loss in operation of $111,000. For the coal mines the operation in 1919, the gross value of the output was $10,891,000; gross expenses reported was $9,672,000 (I am leaving off the hundreds of dollars here) which would have left

a net of $1,219,000. Now the Tax Commission disallowed of those expenses $1,617,000 so that the net was $2,836,000 as representing the net output of the coal mines. Now the nonproducing mines in the State were assessed at $1,719,000. The improvements on the nonproducing mineral lands amounted to $1,010,000. The improvements on producing mine lands of the State were practically $12,100,000, and there are some other little items in here I don't quite understand. The total for the nonproducing lands was $15,000,000. Now the sum of all these items shows that the mineral lands, coal and metal, and their improvements and surface values and everything in the State of New Mexico for 1919 was practically $30,000,000, without adding those figures up exactly. Now we heard yesterday that the railroads assessed valuation was practically $50,000,000.

MR. JOERNS: One road.

MR. SULLY: Was that just one road?

MR. JOERNS: Yes.

MR. SAINT: The total of the railroads in round figures is $103,000,000.

MR. SULLY: I have not in my possession for 1919 the assessed valuation of agricultural lands, but for 1918 the agricultural lands, improvements, personal property such as horses, etc., according to the report of the State Tax Commission, showed an assessed valuation of about $42,000,000. I do not know what the banks were assessed but I have been told at approximately $9,000,000 for the same year. The cattle industry, including grazing lands, improvements and livestock are segregated at something like $120,000,000 for 1918. There is one thing to be said about the mining industry—both coal and metal—that such lands as they occupy except for small areas, whether or not they may be exhausted of their mineral content, are otherwise made use of for their ordinary purposes of grazing sheep and cattle or raising of crops.

MR. HAGERMAN: We have with us today two gentlemen from neighboring states, Judge Stimson from Colorado, and Mr. Ellingwood from Arizona, and we would be very glad to hear from Judge Stimson on the general question of mine taxation, and, if he will, with specific reference to his experience in Colorado on that subject.

JUDGE STIMSON: I have some reluctance in appearing before this Commission, being a resident of another State, but I happen to be very directly concerned with some of the mining operations that are going on in New Mexico. A company with which I am connected has, within a few years, acquired a considerable mining property as it views it, in Grant County in this State.

The system of taxation of mining property in Colorado has varied in different years. The importance of the mining industry was so apparent in the early history of the State that when its first constitution was adopted there was a provision that for a term of years mining property should not be taxed at all. That may have been called a bonus for the mining operations, but it was purely because of the great value to the development of the State that the mining industry seemed to possess. In 1886 the first law for mine taxation in Colorado was adopted. It is not necessary to discuss that now, there have been

changes in that law. In Colorado the term "mining property" applies exclusively to metalliferous mines. Coal mines, as has been said here today, are not taxed in that way at all.

The mining property, then, is divided into two classes,—producing mines and nonproducing mines. A producing mine is a mine which produces over $5,000 worth of ore in a year. A nonproducing mine is one that produces less. The taxation of a producing mine is based on the output,—I wouldn't say profit, as Mr. Sully has used the word, because the profit is hardly the same thing as net production, if, as it is now, it is one-fourth of the gross value of the ore, unless the net exceeds that one-fourth of the gross, in which case it is all of the net. That sounds a bit complicated maybe, but it is perfectly simple. The gross value of the ore at the surface is taken and divided by four. There are certain deductions allowed, almost exactly like those of New Mexico. The work of extraction and the supplies. No overhead charges, no expense for general management, no general office expense of any kind, are permitted as a deduction, but the actual cost of getting the ore out of the ground, including only compensation to those who are directly engaged in the extraction of the ore, are the allowances that are permitted. In case one-fourth of the gross is greater than the entire net ,with those deductions, then one-fourth of the gross is used. In case the net exceeds one-fourth of the gross, then the net is used as the valuation of the mine.

Nonproductive mining property is assessed on an estimated value but no nonproducing mine shall be assessed at any higher valuation than the lowest producing mine in that locality. The result of that has been—we all know that the valuation for taxation purposes is at best but a proximation, there can't be exact accuracy in it, and the best we can do is to try to get at the thing as nearly as possible, and we all understand in Colorado that the value of a mine is what is in the ground and that is only determined when that stuff is taken out of the ground.

A man may be willing to speculate. A man may be willing to make an investment of a large amount of money in the purchase of a piece of mining property in the hope that he will get a return of the amount that he invests, and also something in addition to pay him for his trouble, but that is not a criterion, as we view it,—may be sort of a criterion, but it is not the estimation of what the mine is worth. Nobody knows what a mine is worth. One man can see in the ground just as far as another. During the 37 years I have lived in Colorado most of my time has been spent in mining camps and mining has kept me broke. I have had a little law practice which has permitted me to go on and make a living, but mining has kept me broke because I have been seeking operations to make more money than was found to be in the production when it was actually taken out of the ground.

Our Constitution, just as the New Mexico Constitution provides that all property shall be assessed at its cash value for purpose of taxation. The full cash value, as we view it, of a piece of mining property is what we can take out and the value of a mine this year is what we can take out of that mine this year. There is an added tax, or an added valuation, for equipment included in office buildings and mining machinery, tools and things of that sort, but so far as the value of the mine itself is concerned, there is only one value to it and that is the stuff that is taken out of the ground this year, that is what it is

worth this year, and that is,—with all due respect to the gentleman who has been speaking,—that is an ad valorem valuation, an ad valorem dividend. I have been very much interested in my life in Colorado, in considering this question of selling price, or going value of a piece of mining property, as determinative of its actual value for public consideration, and the only interest the public has, of course, is for purposes of taxation, and I venture to say that not one in twenty of the mining operations that are attempted return to the investor his original capital. It has been said by much greater authorities that I, that even on the great Comstock lode in Nevada which was the biggest lode ever found in the United States, not over fifty of the investments that were made there resulted in the return of the original capital.

I venture to say that the valuation of the mines of New Mexico for tax purposes under the present law is not only equitable, but most favorable with the sale value of other properties. 5,000 or 6,500 odd real estate transfers have been examined in this state, so I am told within the last year, with a showing that was mentioned by Mr. Sully this morning. That the property was valued for taxation purposes, not at the going sale value of them, but at 56 percent of that, and, in one county in the state I am told it is 22 percent. Those inequalities must exist. The miner, one who buys a piece of mining property and puts a hundred thousand dollars in it, of course is influenced by just exactly the same motives that prompt any other investment, but, as a decision of the court in Washington said, "it is a capitalizing of his hopes and dreams." He doesn't know what is in the ground. He makes the best investment he can and says "I will take a chance and I will give $100,000 for this property in the hope I will get $100,000 back and a great deal more with it." I know that in the town of Aspen, with which you, Governor Hagerman, have some acquaintance, I know that in that town the Pitkin County Silver Mine fields, the fields, the most careful investigation we can make shows that the total investment of money in those mining enterprises was greater than the actual receipts that had been taken out . There was one big mine which for a short time produced its silver at a comparatively low rate, that was the Molly Gibson, and if anybody had taken the Molly Gibson mine at the time when the stock was selling for $10 a share and had used that as the valuation of that mine for assessment purposes he would have done a great wrong to everybody because within a year from that time the stock was selling for less than a dollar.

The experience of all of us who have been engaged in mining is that we are rich one day and poor another. I had the experience of being rich for 24 hours, in my mind, but I found that the two feet of gray copper silver bearing ore which had been opened up and which was worth $2,000 a ton on the market at that time, had about a ton of ore in it and when that ton had been taken out there wasn't anything left. Now I would have given that day, if I had had it, a great deal for that mining property. I only owned a small part of it. But to say that the sale price should be a fair valuation for assessment purposes is all wrong. A farm generally produces every year, a mine produces once. When it produces once it is done, it is gone, there is nothing there. The taking out of a ton of ore is the taking away of your actual asset. It is diminishing your asset. It isn't a profit, it is depleting, it is removing your actual property out of which you hope to get your money. A ton of ore taken from a mine, the ton of ore

being worth a hundred dollars, diminishes the value of a mine a hundred dollars. Indeed, it is the only value that the mine has. Prices are paid, high prices are paid for a piece of mining property, because people are of a speculative tendency, because they want to take a chance, and sometimes the returns are entirely satisfactory, sometimes not at all, but fundamentally it seems to me that since your money that you get from the ore that you take out represents merely a return of your capital, it can not be counted as income, as earnings, as profits, until the entire investment has been returned.

Now the United States Government has recognized that and in its endeavor to arrive at a conclusion which would be acceptable has permitted an allowance for depletion and another allowance for depreciation. But to say that a metalliferous mine, particularly if it is a mine on a vein, has a life which can be prophesied is to go further into the imaginative realms of human thought than most people will be willing to do, except that they will take a chance with their own money.

Your taxation law in New Mexico is very like ours; is an endeavor to arrive at the actual worth of the mine for the year during which the valuation—for which the valuation is made. My honest belief is that it is the actual value of the mine itself.

The distinction between agricultural operations and mining operations was pretty well expressed, I think, by a mining friend of mine who went into a sugar beet enterprise. He had been engaged in milling on a very extensive scale, milling of ores. When he came back from his first run—first sugar campaign—I asked him how that compared with running a mill for the reduction of ore. "Why," he said, "the operation is very much the same, with this difference, in running a sugar beet factory your ore reserves are renewed every year while with running a mine for the reduction of ores there is no renewal of your ore reserves, it is all done, it is all gone."

It seems to me that our system in Colorado and your system in New Mexico is as fair a determination of the actual value of the thing which you have as is possible to obtain. There is another thing that I never have heard mentioned, but which has come into my mind. A thousand pounds of copper are produced from the Chino Copper Company's operations. That copper itself becomes a thing of value which is taxed year after year in the form of copper wire, in the form of the various things into which the copper goes as an article of manufacture, while the production from your farm disappears, probably before the next assessment day comes around, and I don't think there is any tax on agricultural products in this state at all. The tax is on the farm itself, isn't it?

MR. JOERNS: Very largely, yes.

JUDGE STIMSON: So it seems to me that is an element to be taken into account. I don't intend to give you a lecture on economics, I realize that your duties are very onerous, that your problem is a very serious one, and I don't wish to discuss the economics to any great extent.

MR. SIMMS: Has the Colorado mine tax law been tested in the courts?

JUDGE STIMSON: I don't think so. Oh, yes, there have been one or two. There was one action, I remember, in which I participated, that was in determining the definition of the word "value," the difference between "gross value" and "net value." They passed on the constitutionality of the law, but there is a declaration that the valuation of a mine for taxation purposes is what is dug out of the mine that year. That is a legislative declaration and that is accepted.

MR. HAIG: Can you tell us what degree of satisfaction the mine law of Colorado gives to the people of the State? Are they pleased with it?

A. There are certain people who have the feeling, which doesn't amount to a conviction, perhaps, as your Chairman says is the condition in New Mexico, that the mining properties are not paying their fair share of the burden. My observation is that in the development of modern civilization most people want to bear their share of the burden. The sense of responsibility is great with us altogether, and while the tax gatherer has never been a very popular individual, he is less unpopular than he was a short time ago. Most people want to be perfectly fair. When I first went to Colorado the value of the mining production in the State was far in excess of the agricultural production. In '19, the value of the mineral production in Colorado was less than $23,000,000 and the value of the agricultural products over $191,000,000. The mining industry has been considered a very important industry. The Denver & Rio Grande Railroad, which for most of its length is within the limits of the State of Colorado, gathers 79 percent of its freight income from the mines, including the coal mines of the State. I am told by competent authority that the mines of the country furnish 65 percent of the freight returns for the railroads of the country. I never have verified that, but I am told that is true. The mining industry is an important one. What the Chino Copper Company can do, or the Burro Mountain Mining Company can do or what other big companies can do, I don't know, but I do know that the comparatively small miner is having a pretty hard time getting along right now. Now that famous gold camp of Cripple Creek in Colorado is almost in the throes of dissolution because the cost of mining has increased and the value of the product has remained fixed.

MR. HAGERMAN: Isn't it because the ore bodies have been depleted largely?

A. Oh, no, I don't think so. There is a great deal of ore there, but here it is. An ounce of gold is worth $20. There is no variation. The increase in cost of mining is about 70 percent. In addition to that, the $20 that ounce of gold will bring will buy about 60 percent of what it would formerly buy. There is where those men are finding their difficulties. Of course the rich ore bodies, Mr. Chairman, have been somewhat exhausted, but if you will remember most of the bodies of Cripple Creek have come from one ounce stuff.

MR. HAIG: Is it not true that there is at present a Commission working on this question of mine taxation in Colorado?

A. No, well I may say this. There is a feeling among the agricultural people that the mine is not bearing its fair burden. That feeling is reflected in the attitude of the tax commission and one member

of the tax commission in particular, Mr. Link, has been very zealous in procuring a system of valuation of mines which should be the estimate of some man as to what those mines are worth, or some set of men.

Q. But you don't think that the sentiment is very strong in favor of the change?

A. I can't tell how strong that sentiment is. It has never had an opportunity to express itself except in sessions of the legislature and there the legislature has concluded this. I will say this, there was an effort to initiate a law in Colorado which failed because of lack of interest in it. We have initiation of laws there by petition and an endeavor was made to initiate such a law, but the effort died aborning and the law was not initiated because the people seemed to lose interest in it. What will happen when the legislature convenes for its next session we can't tell, any more than you can tell about the value of a vein three feet ahead than the headings now show.

MR HAGERMAN: We have been very much interested and thank you very much indeed for your talk. I am sure the personal element of it appeals to me very closely inasmuch as the Molly Gibson mine is so closely associated in my own interests, and I was struck with what you said about the capitalization of hopes and dreams and the comparison between such capitalization in the case of mines and farms. It seems to me, from my own experience, that farms are in a large degree about as unstable a thing to place ones hopes upon as mines.

JUDGE STIMSON: And yet with a farm, whatever it will produce it will continue to produce.

MR. HAGERMAN: Mr. Ellinwood, may we hear from you as to the State of Arizona?

MR. ELLINWOOD: Mr. Chairman, I didn't intend to have anything to say at this hearing. I didn't come here for that purpose. I represent the legal department of Phelps Dodge corporation and not its operating department, and I suppose the only purpose of my saying anything is to give you whatever light I may on the operation of the Arizona law.

We have no law in Arizona applicable to the assessment of mines. We simply passed a production tax, copied very largely from the Colorado law. I think it was uniformly satisfactory, with this exception; that only one class of people are assessed by a system different than any other class. It raises a suspicion that one class is being discriminated against. I don't think they were. I think the law worked equitably, and I think each paid its share of the State burden, but there was that feeling among the agriculturalists, that the mining companies were escaping taxation. I think today the agricultural interests are bearing the same proportion of the State Tax as the mines are under the system as in effect in Arizona, but I say we have no law in Arizona. The bullion tax, as it was commonly called, which was a product tax, was permitted to lapse and all property in Arizona is assessed at full cash value, but the Tax Commission is given the broadest possible powers. The Tax Commission have all the power of a county assessor in that they order the county assessor to put property on the tax roll in the county or to raise property, not by a raise of

the county, but individual property. They can raise a bank or a butcher shop or a mine or agricultural farm or farming implements, and they have done so. Much of the land in the Salt River Valley is assessed as high as three or four hundred dollars an acre. Sheep and cattle are raised, and they have tried earnestly and conscientiously to assess all property in the State at its true cash value.

Now when they came to mines this Commission having these broad powers, found themselves in the peculiar position that you gentlemen here do, the difficulty in arriving at any value for a mine, a producing mine, so they devised a plan or scheme of their own and practically put a product tax into effect under their broad powers as Commissioners, and I will show you what that is.

This (indicating) is a letter from the Chairman of the Commission to a member of the State Legislature describing their system of taxation. (Reading as follows:)

"Dear Sir:—

This Commission is in receipt of your favor of August 3rd, but owing to the fact that it was necessary to compile certain data called for therein, and the further fact that the Commission has been sitting as a State Board of Equalization continuously for some time, it has been impossible to reach the subject until this time.

We note your inquiries with reference to the assessment of productive mines and will be pleased to answer your queries in the order that they come as follows:

First: The productive patented and unpatented mines were divided into eight separate and distinct classifications as follows:

Class 1. Copper mines whose ore bodies are found in veins, fissures and lenses and do not show evidence of exhaustion.

Class 2. Copper mines whose ore bodies consist of porphyry deposits and large acreages of contiguous ground largely unexplored and undeveloped.

Class 3. Copper mines whose ore bodies consist of developed low grade porphyry deposits.

Class 4. Copper mines whose ore deposits show evidence of exhaustion.

Class 5. Gold and silver mines whose ore deposits show evidence of exhaustion.

Class 6. Gold and silver mines whose ore bodies have not shown evidence of exhaustion.

Class 7. Zinc and lead mines.

Class 8. All producing mines of irregular output.

In addition to these eight classes three subdivisions were made.

Subdivision "A" which shall include all such properties as have entered the profitable stage during the year 1915, also so as to contain Subdivision "B" which shall include all properties that have suspended profitable production during the period under consideration, for reasons other than market or physicial conditions; also, so as to contain Subdivision "C" which shall include all such properties that have suspended profitable production when said properties could have been operated at a profit during the period under consideration.

The net earnings of Classes One, Two and Three were capitalized at fifteen percent, Classes Four, Six and Seven at twenty percent, Class Five at twenty-five percent and Class Eight at thirty-three and one-third percent.

SECOND: The net production only is used as a basis of determining the value of these mines, and a four years' average was used in making the computation.

THIRD: The actual price obtained for the metal products of the mines was used in computing the gross and net earnings of the mines, and, as before stated, this covered a period of four years.

FOURTH: This question we were unable to answer for you in detail owing to the fact that when first it became necessary for the Commission to formulate a method for assessing the producing mines, it was found that there was some reluctance upon the part of many of the producing mining companies to furnish the Commission with all the details pertaining to their operations. This, for the reason that while they considered the Commission itself had a lawful right to this information, they did not desire that it should become public property, and for this reason the Commission at that time by resolution placed upon its minutes refused to divulge its operations of any mining company, except that it be upon any order from the company or by a court of competent jurisdiction. However, if it will be of assistance to you, the Commission will be glad to furnish you with the total gross and net earnings of the producing mines in Arizona for both the years 1914-1915.

In this connection, however, we may add that the net proceeds in each of these years as returned by the companies themselves differs materially from the net actually found by the calculations for the current year's assessment. This came about owing to the fact that the companies in many instances had placed in their operating costs items of new construction, interest charges, and other amounts that were not proper operating charges, but that should have been taken into the capital account.

The Commission desires to thank you for your interest in this matter and for your kind words of commendation "with the manner by which the taxation of mines have terminated." The Commission has always felt that this heretofore grievious question could be solved by the taxing authorities

just as well as any other problem of taxation and we are glad to state at the present writing practically no complaint has been had from any of the large companies on this year's assessment, and we do not anticipate any difficulty from the mines in future years.

We feel that Arizona has taken a step forward in this respect and that the owners of the mines will be pleased in future to assist the Commission in every way possible in arriving at equitable value of their property just the same as the railroads and public service corporations have always cooperated with the Commission in past years to the same end.

Trusting that this information will meet your requirements and be of assistance to you and holding ourselves in readiness at all times to furnish you with such information as we can consistently give, we are,

Very truly yours,"

Now there is only one serious trouble with this law, and that is that it is unconstitutional, and that was arrived at by reason of the fact that they applied this same system of capitalizing all earnings in order to arrive at an ad valorem value of other property, one company being the Standard Oil Company. They took the earnings of the Standard Oil Company in Arizona and capitalized it. They were assessed at $300,000. They were raised to $3,000,000 on carrying out this formula. That case was in our office and we took it to the Circuit Court of Appeals in San Francisco. They held that the entire scheme of capitalizing the earnings to arrive at an ad valorem value was unconstitutional and void and set the assessment aside. That was the recent case of Standard Oil Company vs. Howe, 257 Fed. R. 481.

MR. HAIG: The miners haven't questioned it?

A. The miners have never questioned it, but it is the same system. Now the decision in that case follows the decision of Wells Fargo Company vs. Johnson, in about 259 U. S., a case going to the Supreme Court of the United Statse, in which North Dakota attempted to equalize the earnings of the Wells Fargo Express Company and arrive at the ad valorem value of the Express Company in North Dakota. This case of the Standard Oil Company presented a very spectacular case in this; that when the Commission had equalized the earnings and arrived at $3,000,000 and tried to allocate it and attach it to some physical property, on these horses and wagons, they had the horses and wagons attached at $35,000 or $40,000 apiece. I take it, from these decisions, both the Circuit Court decision and the Johnson case decision, that you may not capitalize earnings for the sole purpose of fixing the ad valorem value of property, and that is the trouble with this law. The mine companies have not tested it out. I think generally that the mining companies are quite satisfied with the action of the Board. Really, when it comes down to brass tacks, what the taxpayer is interested in is the number of dollars he has to pay out for taxes and if he doesn't have to pay an unjust portion of the taxes why the system by which they arrive at it becomes immaterial to the taxpayer.

MR. HAGERMAN: I understood you to say, Mr. Ellinwood, that there was no law in Arizona and that the method of arriving at the

ad valorem value of mines through the capitalization of the net earnings were a mere administrative method resorted to by the Commission?

A. That is what I said.

Q. Then in what way was the matter brought up in the Federal case you spoke of?

A. Because of the method of taxing. The system which they used, this formula they used to arrive at it. As I understand it, the unconstitutional enforcement of the law is just as invalid as unconstistutional law.

MR. HAIG: Well, the constitutional issue turned on the point as to whether that method did result in the valuation of property which was equitable as compared with the valuation of other companies?

A. The courts said this system of assessment, this plan of the Tax Commission, was fundamentally wrong and erroneous in principle,—that is the language of the Circuit Court of Appeals in speaking of it.

Q. If they had used a capitalization factor which resulted in a valuation of $35 a horse instead of $35,000, do you think the unconstitutional issue would have existed?

A. I don't think the taxpayer would have raised it. The language of the Supreme Court of the United States is that where this is used as the sole factor, it is void.

Q. Do you mind telling us how the four year average has worked out in Arizona?

A. It is not only satisfactory but I think it is absolutely necessary, otherwise in lean years they would be deprived of revenue.

Q. How do they tax nonproducing mines?

A. They tax them on an equity basis.

Q. That is not an inequitable arrangement?

A. No.

Q. As compared with producing mines?

A. No, the county assessor fixes that.

Q. The net income as they determine it for their uses out there is similar to the net income here, or is it more nearly like the federal income which allows a deduction for depletion?

A. They allow a great many deductions.

Q. Do they allow depletion?

A. No, they don't allow depletion. They allow deductions, but those deductions which they think go into capital they don't allow. That is generally where the whole controversy before the Board of Equalization is, is concerning deductions.

Q. Do they count value arrived at as the result of capitalization

as being the value of the mine and do not assess any additional improvements?

A. They assess improvements if the improvements are used for some other purpose.

Q. For some other purpose than this particular mining venture?

A. Yes. Very frequently mining camps,—we have very many houses on mining camps that are rented.

Q. That is all very interesting. Are there any other points?

A. They started out with the idea, until they had this trouble with the Circuit Court of Appeals, of carrying it to all other property. We had a meat broker there. His slaughter house and meat house he returned at $90,000. That year he got a profitable contract furnishing beef to the army on which he made considerable money. They equalized his earnings and raised his meat shop to $700,000. That is the way it works. Mr. Sawyer can tell you about the property at Tyrone.

MR. HAYDON: Taking into consideration that our mining companies here might not accept the plan adopted in California of permitting the men to assess on capitalization valuation, in your judgment is the plan which we have in New Mexico unreasonable?

A. I think with some modification the law you have in New Mexico is as good a system as you can possibly devise. I think you ought to have a system by which there would be an average spread over some years rather than to take one year. Then you have these problems, in these coal companies, which have nothing to do with metalliferous mines in regard to contiguous land which is not employed for any purpose. Then this system you have here, if it doesn't raise money enough for the State it seems to me then you should simply raise your net. Net once, net twice. I would keep the system in effect that you have right now and if the taxation of the net isn't enough, tax twice the net. If that isn't enough, tax three times the net, but this is the best system you can devise, that is my idea.

MR. HAIG: Could I ask you one more question? Have they met this problem of contiguous property in Arizona?

A. Not in any way, because our areas are so small.

Q. With regard to the Tax Commission, which has assumed to itself so much authority in fixing the values, have they been able, do you think, to solve the problem satisfactorily in getting a Commission they can trust? Do the people of the State have confidence in the Commission? Has the centralization of authority worked out well?

A. Well, I think fairly well. We will know better after the 2nd of November.

MR. HAYDON: In other words, Mr. Ellinwood, when you say "assess once, assess twice," in other words if when you find you have made an assessment of your properties in the State you can't raise sufficient revenue upon that valuation, simply slap on another valuation?

A. Make it net and a half. I should raise the value of all other property in the State. As I understand it the property in your state hasn't been assessed at its full cash value. I think some of the figures given me here were that the net products of the farms in this state are $60,000,000 and all they pay on the farms is $40,000,000. The same is true of the mines. I think you have just got to elevate all your property values and then I think one of the worst problems is the administrative problem. You don't collect enough taxes. You have got $2,000,000 delinquent taxes in this state.

JUDGE STIMSON: There is one matter that I would like to submit. This paper that I have in my hand is an extract from an address by Mr. Graton before the meeting of the Committee of American Institute of Mining Engineers called to Washington to advise with the Government on the fixing of an income tax for mines. He was an officer of the Government and didn't appear as the representative of the mining interests in any particular and I took the liberty the other day of making some extracts from this paper which apply particularly to the system of taxation for mining property generally, and if the Commission would care for it I would be very glad indeed to leave it with you.

MR. HAGERMAN: Mr. Brown, can you tell us something about the situation of the smaller mine owners in the country as to their satisfaction with the present system of taxation?

A. I think they are very well satisfied.

Q. As a class?

A. As a class, yes, sir.

Q. They are not dissatisfied?

A. No, sir.

Q. I know when Mr. Fitch was up here about a year ago he seemed to act at that time as though he thought that was a very serious problem, sort of a separate problem from those of the large coal and porphyry mines. Of course they are taxed by the local authorities and on the whole you don't think there is any rank injustice or inequity as far as their assessments are concerned?

A. No, sir.

Q. Have you any suggestions to make on the question as a whole?

A. I don't believe we could improve on it.

MR. HAGERMAN: Is there anyone else here who would like to speak in regard to any of these topics that are before us today?

MR. SAWYER: Mr. Chairman, I haven't anything particular to add to the general considerations that have been offered by Mr. Sully and Judge Stimson and Mr. Ellinwood, and I know the time is getting short, but there are a few remarks I would like to make and I will be as brief as I can. You may regard them in the nature of sidelights on the situation I think. In the article that Mr. Graton has written

there is a very full setting forth of the various hazards that the mining industry has to meet with and there have been others mentioned here and emphasized and they don't need to be repeated, but there is one which I think, while it may not have been overlooked, so far as I have heard there has been no mention of it, and that is the community responsibility which a mining company has to meet when it goes out, you might say, into an undeveloped part of the country where there are no railroads, no houses or living conditions. To illustrate, I take the case of the company which I represent at Tyrone. Down there the community was entirely undeveloped when the company started its operations, and it was necessary to begin with, to build roads. It was necessary to build houses, provide a water supply for the community, build a hospital, to even build a justice court and jail and churches, and to maintain all these things, and I simply wanted to make the point,—

MR. HAIG: There is a large invisible tax there.

A. Exactly, and in all these expenses the Company has to meet an indirect tax. Now to be more specific, in our case take the hospital as an example. Of course with a force of from 800 to 1,000 men at work the hospital facilities had to be provided. With a well equipped, fairly large hospital in the county it is only natural that it should be made use of by the neighboring county at large and people from the neighboring ranches and dry farms and from the county in general come, patients are admitted, in a great many cases it is known that they will not be pay cases, they are taken in as charity cases, some are taken in as pay patients, but there are a great many bad debts. Since we have been operating this hospital department of ours has shown a deficit of $35,000, all of which has gone into benefit and the general welfare of the community. There has been nearly an equal amount spent on roads, a great many of which are strictly county roads. There has been something in the neighborhood of $7,000 a year spent in the maintenance of churches, paying the ministers and contributions to the general welfare activities, about $7,000 a year. Even the deputy sheriffs, the watchmen who are deputies of the county sheriff, are on the company payroll, and I am mentioning that because it is a point showing the burden which a company has to bear in the nature of an indirect tax, and that the burden on the community is to a like amount lessened, and that applies to every other mine, large or small, in the same way that it does to our company, so that goes to the mining industry in general.

Now I will just go into one other matter, as briefly as possible, to show how helpless an engineer is in arriving at the value of a mine if he tries to get at it from the mine's net profit will be by taking the cost and the selling price of the production. About two years ago when there was a slump in the copper market we concluded it would be a prudent time to extend the development of the mine and make improvements which we had decided upon in metallurgy to enlarge the production to prepare for the return of normal prices in the future. So as to forecast what could be done with the help of some very able assistants I prepared some figures showing that as a result of this further development in the mine, improving the facilities for handling the ore and extracting the ore, enlarging the mill, operating on a bigger scale and improving the metallurgy of the mill I estimated

that the production cost would be about 15c a pound. We went ahead with that program and last June, as we were about to bring the work to completion and resume production I took the same figures and applied the same factors, labor and supplies, freight rates, cost of fuel oil and so on, but simply increased them in the amounts which they had increased during the year. Now I will find here a statement. It was shown that using the same figures our cost of production would be, not 15c, but 17.3c. That was in June. On top of that we recently had a notice of a general freight increase. Now I have applied that to our conditions and I found that as a result of the flat increase in freight rates our production cost would be increased still further about a half a cent a pound. Then I took, arbitrarily, the assumption that our cost of supplies, as the result of this freight increase, would go up about 15 percent as the concerns from whom we buy these supplies must pass that on to their product, and that adds, applying 15 percent on our supply cost, about a cent a pound more to our cost. On top of that we have this danger we are facing, of course the cost of living may also go up as the result of the freight increase and it will necessitate a further increase in wages and that will still further increase our production cost so that now instead of facing a reasonable profit on our production we are about where we were in the beginning and we can't foresee that on the present market we are going to make any profit at all. Those figures I am giving you because they are specific as far as our particular case is concerned, and they apply in general to the industry at large and they are additional expenses which we can't pass on, as other industries can. In the case of other industries when costs go up they can tack them onto their selling price and that is something, of course, which we are not able to do.

MR. HAGERMAN: What would you think of an income tax applied in addition to the production tax?

A. I think I agree with what Mr. Sully said, as I understood, that he thought it would be perfectly fair if it applied equally to all industries, or to individuals and industries.

MR. HAIG: Have you any particular convictions on the setoff problems?

A. No, because that was a new phase of it and I haven't thought of it enough to make an answer at the present.

MR. HAGERMAN: We thank you very much indeed for your kindness in speaking to us. Mr. Kaseman, have you anything more you would like to say?

MR. KASEMAN: I would like to say something. While these other gentlemen were talking this morning several thoughts occurred to me. One was raised by the Chairman in your opening remarks in which you stated in effect you were considering both the possibility of favoring the mines and also of penalizing them. You did'nt put it that strong, but those are the facts and that dismissed those as not being desired.

MR. HAGERMAN: I dismissed the penalization, certainly, as not being desired.

MR. KASEMAN: I don't think the mining men have any thought

of asking for any particular favors, but that statement, together with a question that you asked later as to the competitive coal states with New Mexico causes me to make this statement. That Utah and Wyoming are very strong competitors of New Mexico coal mines on the Pacific Coast. On the other markets that are reached by New Mexico coal mines out of the State of New Mexico, Colorado, Kansas and Oklahoma are strong competitors. In connection with another matter I have, within the last few weeks, looked up the production of all these states and I was very much surprised to learn that the coal production in New Mexico covering a period of years has grown less than has the production in any one of those other states, showing possibly, among other things, and at least in a broad sense, that the coal mines apparently are not as prosperous in New Mexico as they are in all of these surrounding producing states, and while the coal mining men are not asking any particular favors, it would be well to bear this matter in mind, as Mr. Springer stated this morning, to guard particularly against any handicap being placed, in the way of taxation.

One of the gentlemen this morning remarked that even though a coal mine might not be making a great deal of money at the present time, that it was increasing in value. My experience is that mines do not increase in value. After a mine has reached a reasonable stage of development, which is usually reached early in the game, it does not increase in value but on the other hand the tendency is the other way because every ton of ore you take out next year will cost you more to take out than it does this year. Your mine is bigger, your maintenance of your roadways and courses is greater, the amount of water which has to be pumped is greater, the coal comes from a more remote distance from the place where you can put it into the railroad cars and your danger of catastrophe is increased many fold so that mines do not increase in value and really a mine is only worth what it does for you today, just like a man's labor. You can't expect that it is much more valuable in the future than it is at the present time.

Another feature about the mines is in regard to the question that was raised this morning, but not fully gone into, of the most accessible coal, and other mineral as well, and the best quality having been already mined. Now that is true, particularly of the coal lands in New Mexico. Active mining has been conducted here for about 30 years now and of course it was natural that when people came in here and commenced to open up mines, particulary in the early days, there were a great many squatters even on these large areas and a great many mines were opened and it was very natural that through the courses of competition the ones which were the best would survive and would be worked at first. That is true of the Cerrillos field and of the Gallup field. There probably never will be another mine of the Gallup field as good as the Gibson mine, which was in operation twenty years ago. In the Cerrillos field the White Ash mine in operation twenty years ago is exhausted and there will never be another one as good as that, so today we are mining at a considerable disadvantage as against what we have mined in the past, both as to the quality of coal, the average quality of coal that we can produce, and the cost of the same. I think that is all. I just had those thoughts occur to me while other gentlemen were speaking.

At this time an adjournment was taken until tomorrow, Thursday, August 19th, at 9:30 a. m.

## THURSDAY MORNING SESSION, AUGUST 19, 1920

The meeting was called to order by the Chairman at 9:30 o'clock. All members of the Commission were present.

MR. HAGERMAN: The live stock and grazing interest in the state are, and are destined to be, I think, indefinitely in the future the main productive interests in the state. Taking the grazing lands and the live stock together, the assessed valuation amounts to about $125,000,000, which is $25,000,000 more than the railroads, and in comparison with the mines which we have been discussing at such length, which amount to around from $30,000,000 to $35,000,000, are vastly greater in importance. Whatever may be the future of the state in regard to the mining industry, much of our potential wealth and future welfare depends upon the success of the live stock industry and the proper preservation of the range and the encouragement given to the raising of cattle and sheep. Therefore the problem as to the assessment both of grazing lands and live stock is, in the opinion of the Commission, I am sure, the most important of any of the problems before us. We cannot disassociate the matter of grazing lands with live stock. One is absolutely dependent upon the other and they must be considered as a whole. Of course the cattle and the sheep interests are equally important.

We have with us one not only directly connected particularly with the sheep interests, but Mr. Victor Culberson is the President of the New Mexico Cattle Growers Association and he has come to Santa Fe for the purpose of presenting his views and those of his associates in regard to the general problem of taxation of cattle and grazing lands. We will be very glad indeed, Mr. Culberson, to have you give us any statement you may have prepared and to go into the matter just as fully as you possibly can.

MR. CULBERSON: Mr. Chairman and gentlemen, if it is a hard luck story you are expecting I am afraid you are going to be disappointed because everything is lovely with the cattle business and we are getting along very nicely. It is true in many parts of the state we are going through in a measure a droughty condition. Coupled with that we are not able to sell anything this year, but we have gone through so many conditions of a like character that we have become accustomed to it and it makes absolutely no difference if we live through it. But I would like to state that so far as obtaining revenue to govern the affairs of the state, I think one of the chief troubles today is that the property is not gotten on the rolls, nor will it be gotten on the rolls with our present system of assessment. In my opinion the assessors, to get this property on the rolls, should be men appointed, not elected, and employed with his undivided time and attention, and the quality of that assessor is the most essential thing and I am very much in favor of some change, if possible, being brought about to change our system of assessors. Now I know personally of instances in our country where the property isn't on the rolls, and the people who are paying the taxes of that country sit back and say "well, that isn't my business." I maintain it is every man's business to see that the other man's property is on the rolls.

Now I believe you said you wanted, as near as possible, what I think relative to the value of these cattle on the ranges. Now a commodity of any character is only worth what it will sell for and as an illustration to arrive at what cattle should be assessed at I would

like to state that last year cattle from our part of the country, the select yearling steers, after throwing out considerable stuff first—

MR. SAINT: What percentage did you throw out?

A: Usually about 15 or 20 per cent thrown out by the producer, the man purchasing those cattle then has a ten per cent contract under which he rejects 10 per cent of those cattle, leaving the most select cattle that you have in the bunch. Now that class of stuff sold over through our country last year ranging from $35 to $40 and $42.50 a year. Very few sold for $42.50 per head. Later on in the season I know of shipments of trainloads of the average bunch of stock left when they went to market and sold at a price netting the ranch $28 per head. Take the difference between that price and the price the yearlings sold for, it will place your average range cattle at a valuation of about $34 per head, which I believe is something near what they are assessed at.

MR. SAINT: $33 is the average.

A: Well, it will place them around $34. Now that, I believe, covers, as near as I can describe it, the value of the cattle on the range. Are there any questions you want to ask relative to that?

MR. HAGERMAN: Do you think the cattle are assessed as to quantity pretty nearly up to their full number?

A. On the ranges? No, sir. That is what I stated first. I know of instances down in my part of the country where they are not assessed to their full number. That, however, is just a very, very few cases. Now the cattle men in our county have pretty well returned their full amount. I believe that the Tax Commission has been able to get a great many of those who have not made their full returns.

Q. Take the state through, what proportion of the cattle do you think are returned on the tax rolls?

A. Well, I can only say from our own county definitely. Now in our part of the country I think there is about right in the neighborhood of 90 percent, if not a little bit better than 90 percent.

Q. What country does that include, Mr. Culberson?

A. That would include Grant county, Luna, Hidalgo county, Sierra county.

Q. If 90 percent of the cattle throughout the state were returned and the average value of cattle according to your statement is $34 a head, and they are assessed at an average of $33, then you think, even if only 90 percent are returned, that the cattle are bearing their full share of the tax burden of the State?

A. I certainly do.

MR. JOERNS: The records show about 80 percent are returned as compared to the Government estimate throughout the State.

A. Pardon me just a second. When I said 90 percent I referred principally to the counties I mention there.

MR. SAINT: I don't think that would hold good in Socorro.

MR. CULBERSON: I didn't mention Socorro.

MR. SAINT: I doubt if it would hold good in Sierra.

MR. CULBERSON: I believe it will.

MR. JOERNS: About 70 in Sierra.

MR. HAGERMAN: Mr. Culberson, Mr. Joerns has suggested there is a wide divergence between the number of cattle returned and the estimates of the Federal Government. Have you any idea as to the accuracy of the Government estimates as to numbers in the State? Have you had occasion to know how those estimates are made?

A. Well, those estimates are made largely by sending out blanks to the various cattle men throughout the country and asking them to list with the Government the various classes of cattle on their ranges. Now they are arrived at in that way. Then again, they arrive at this thing there by the cattle that goes on the markets and they overlook this fact. There isn't a bunch of cattle sold on any one of the big markets today that isn't entered not less than three or four times on that market as the identical bunch of cattle. I claim the government estimates are not correct. You can go and take the Forest Reserve lands here and you get a very correct number of the cattle on those reserves. They take your calf branding, they take your steer sales and arrive at it from that, deducting a certain percentage for loss. That is the most correct way, but of course they are not all forest lands.

Q. Do you think the investigations which have, during the last couple of years, been carried on by the State Tax Commission as to the number of cattle have been equitable and fairly conducted and that their conclusions have been accurate?

A. Yes, as accurate as you can get them. Now I will cite one particular case of where cattle was returned for several years together at certain numbers and while everybody knew there was more cattle in this particular property than was returned, at the same time it got back to its being everybody's business and yet nobody's business. Now we had a scab break out in the state which compelled those people in that particular district to dip their cattle and in doing that they arrived at practically the number of cattle, almost to the head, that was on that range and I think I am safe in stating in one or two instances they were practically double what they were returned for. Isn't that correct? (Addressing Mr. Saint.)

MR. SAINT: I don't know of any particular instance, any individual case where they were doubled, but some forty or fifty per cent more.

MR. CULBERSON: Perhaps if they had all been gathered they would have been doubled.

MR. SAINT: In one instance the rendition was 18,000 and the dipping record showed 31,000, but that was an extreme case.

MR. HAGERMAN: Do you think the mortgage records which have been used as a basis for the enumeration of cattle by the Tax Commission are the proper indication of the numbers?

A. No, sir, they are not.

Q. Why not?

A. I know of many people that go to the banks and represent a certain number of cattle they haven't got.

Q. And the banks have not the proper facilities—

A. They haven't the proper field men to take the number of those cattle.

Q. You do know the number of cattle enumerated in chattel mortgages, listed in chattel mortgages, is overestimated?

A. Yes, sir, I know of one particular case where we took over a property that was going to be foreclosed on which there was a mortgage for 2,400 head and there were less than 1,500. That leads me to believe these are not correct. And I know of a number of others practically the same way.

MR. SAINT: That is an extreme case, isn't it Mr. Culberson, it wouldn't average that way?

A. Perhaps it wouldn't average that way but you find a great many cases of that kind

MR. SAINT: I know that is true, but at the same time I can't help but think that a bank or money loaner is too careful about their loans to take such chances.

A. That's all right, Mr. Saint, but I happen to know of a number of these cases where I know people didn't have the stuff, or anywhere near the stuff.

MR. HAYDON: I know it is the custom of the banks if a man comes in and says "I have got so many cattle" they will take his statement for it and until very recently banks have never made any investigation.

MR. HAGERMAN: Mr. Culberson, do you think, in connection with the cattle on Forest Reserves, that the applicants make application for more cattle than they actually have, very frequently?

A. In some instances they do.

Q. But the general average, as shown by the Forest records, is comparatively accurate?

A. Yes. You understand, of course, why those applications are made for more, as a rule, than they really have, do you not?

Q. Not fully, no.

A. The Forest Reserve goes on the theory that a certain area will run so many head of cattle, and more particularly if it is an individual allotment they say "this piece of country will run so many head of cattle." The applicant for that will invariably take out that application for that number, whether he has got them or not.

Q. Even though he has to be upon a per capita basis?

A. Yes sir.

Q. On the whole, then, you think that because of the gradual doing away with the open range business and of the activities of the State Tax Commission, that cattle, as to numbers and as to per capita value, are assessed very nearly at their full value.

A. Yes, sir. Now I will go further than that. I will say today there isn't stock in the country that can be sold outright, that is the entire stock, for what they are assessed at.

Q. Is that due to the peculiar depressed condition?

A. It is due to the present conditions, yes, sir, that is, not normal conditions.

MR. SAINT: That is, unnatural conditions?

A. Yes. Our prices had for the last couple of years are not stable prices. They are war prices and this thing can't possibly continue. I don't believe today they will ever see cattle selling again in this country for the prices they have been selling at for the last two years.

MR. HAGERMAN: Do you range your cattle on your own land, Government land or State leased land?

A. We have one property that we range on privately owned land and leased land. We have another property that we run on the National Forest and we have another that we run on half National Forest and half on private lands.

Q. Take in your part of the country, which one of these is the best from a business point of view; to range on deeded land or leased land or Forest land?

A. Well, there isn't a cattle concern in the country today, I am speaking now of the southwestern part of the State, that can buy this $3 land and fence it and improve it and develop the waters on it, which he has got to do because it goes without saying that all the select lands in the early days were taken, all the permanent waters were taken—he would necessarily have to go to an enormous expense to develop the waters, fence and improve a piece of property, there isn't a cattle concern today that can fence every acre of it, run on it and make it pay.

Q. You refer to the three dollar State land?

A. Yes, sir.

Q. In making that reference you refer to the thirty year sale?

A. I do.

Q. Under the thirty year sale program how much does it cost per acre per annum to carry that land, taking into consideration interest on the deferred payments and taxes on the equity. Have you figured that out?

A. I never figured that out exactly, not of late.

MR. ASPLUND: You pay about 15½ cents, don't you, every year per acre?

A. Per acre.

MR. ASPLUND: For the use of that land?

A. Yes, and then it will require, the average year, 40 acres per animal.

MR. HAGERMAN: On a basis of 15c per acre per annum can you make money in the cattle business in the section in New Mexico you are acquainted with?

A. No, sir. That 15c per acre is the very smallest item you have to go against. By the time you develop the water, by the time you fence your lands and many other expenses that goes to make up this, it runs into quite a sum of money.

Q. What would you go into that district of New Mexico now, or advise your friends to go in and pay per acre for the rental of land for the cattle business, with the idea of actually making money yourself out of it?

A. I think when we give beyond 5c we are going beyond the value of it.

Q. You think 5c per acre for the State—

A. I mean the remaining lands, the Government lands. I don't mean the lands taken up years ago, which are the best part of the country.

Q. Take the State as a whole, of course that is a pretty big question, but how many acres do you think, on the average, it will take to care for one animal?

A. You mean the entire state?

Q. The available grazing lands, state open range and not private ownership?

A. It will require 30 acres.

Q. Thirty acres?

A. Yes, sir.

MR. SAINT: The average of the State?

A. The average of the State. There is a great deal of this State, more particularly in our section, that there is a large section of it a thousand acres wouldn't carry an animal. You have got to take those things into consideration. There is a great deal of it covered with sand, a great deal of it is rock beds.

MR. HAGERMAN: Of course you might eliminate that waste land in the state from consideration. That is practically useless for any purpose, isn't it?

A. Yes, sir, absolutely useless.

Q. If you eliminate land that is really of no appreciable value for grazing at what figure would you place the acreage per head?

A. Well, I should say it would run somewhere in the neighborhood of twenty acres.

Q. Twenty acres would be a conservative estimate?

A. I think it would.

Q. On the basis of 20 acres per capita what can one afford to own lands at in order to carry on a successful cattle business? What could you afford to pay for it?

A. On a lease basis or purchase basis?

Q. Purchase basis.

A. Well, now, that varies in different parts of the state. Take the northern and eastern part of the state it has a greater carrying capacity than the south and southwestern part of the state. In our part of the country I don't think it possible for a man to own that land at a valuation of more than $2.

Q. If it took 20 acres at a valuation of $2, would make—

A. Forty dollars.

Q. Forty dollars capital investment per cow per annum?

A. That wouldn't cover the entire cost. You have got to figure into that the expense of improving so it will carry anything at all.

Q. With that in view do you think the valuations placed by the State Tax Commission under their schedule for grazing lands throughout the State is an equitable and fair valuation, take it for all in all?

A. I think it is.

Q. Do you know what that is?

A. If I remember it is $3 in our part of the State.

MR. SAINT: $3 an acre. It runs from $3.75 where the rainfall is maximum to $2.25 where the rainfall is minimum. We gauge it entirely by the rainfall.

MR. HAGERMAN: You think, taking it for all in all it is a fairly equitable basis of valuation.

A. I do in our part of the country. That is for owned lands.

Q. You just said you thought that in your part of the country you could not own land on a higher basis than $2 an acre?

A. I don't think you could.

Q. But of course the $3 land in your part of the country is the best land?

A. The best land. There is a great deal of state land down in that part of the country yet, or rather Government land, that isn't worth anything. I am speaking of it as a whole.

MR. SAINT: Most of the range country, then, that is owned is selected lands?

A. Selected lands. Take it as a whole I think a person could get by by paying $2 an acre for it.

MR. HAGERMAN: The cattle man pays on the estimated value of his land, that is pays taxes on it, on the improvements and on the full value of the product of the land?

A. Yes, sir, pays on both the value of the land and the product of the land.

Q. Do you not think that the cattle raised on range land is as much the product of the soil as the crops raised on agricultural land?

A. Yes, I think it is.

Q. Are there many cattle now ranged in the State on open range?

A. No, sir, very few.

Q. The open range business is practically eliminated, isn't it?

A. Everyone is trying to get away from it as rapidly as possible. It doesn't seem to be the right way to handle it. The only way to handle it is to control your range.

Q. What do you think is the average carrying capacity of the range in New Mexico on the whole as compared with what it was say ten years ago? Is it deteriorating rapidly, take the state as a whole?

A. Well, I will explain that in this way. When we had an open range there is certain sections of the country that would have rains and green up and cattle will go and they will smell it almost immediately, when the rain falls, a distance of at least twenty miles. They will all flock to a certain area when the rains have fallen where there is good grass. Naturally when the rains become general they drift back to their old ranges, to their natural ranges. That overcomes a condition which exists now that you can't overcome. Certain sections of dry range are controlled and fenced and you have got to hold that stock there and on the whole it occurs to me that the carrying capacity is less right today than it was when it was open. I am sure there is less cattle in the country too.

Q. Do you think the cattle business or the sheep business is worse in the matter of overgrazing and the deterioration of the range as a whole?

A. You mean it is worse?

Q. Which is worse? Do cattle or sheep, as a whole in the State, overgraze the worst?

A. Well, now, ranges that are controlled today, if I understand your question correctly, are not being overgrazed. They are cutting down their stocks to meet the carrying capacity of the range. Now so far as the sheep end of it is concerned, I am not very familiar with the sheep ranges, I don't know how they are.

Q. It is a fact that there are great stretches of open range in the State rapidly deteriorating in the last ten or fifteen years?

A. Yes, because it becomes everybody's property and they overdo it.

Q. So that actually the greatest resource in the state is deteriorating rather than improving on the whole you think?

A. I think so, and until these lands are leased and controlled, absolutely every acre of it, there will be no change in it.

Q. The only possible way of maintaining this resource of ours is to bring about conditions which will make it advantageous for the people to own pasture lands and private ownerships in large enough areas to make it pay?

A. I think so.

Q. How small an area can a man make a living on in the cattle business?

A. How small an area? I should dislike very much to undertake to make a living on less than a township, and I don't know that I would want to do that. I would rather go and get a job from somebody and work those cattle than to try to make it on less than a township, or even a township.

MR. SAINT: That is 44,000 acres?

A. 23,000.

MR. HAGERMAN: You have seen a good many attempts of small stockmen to try to make a living on smaller areas, who have failed?

A. Well, when this 640 acre homestead act went into effect our country, that is the public lands down there, were practically all taken up and I don't know of a single one of them that remained.

Q. That was down south of Socorro?

A. Yes, sir. I don't know of a single one that remained in the business, and they clubbed together too, in as much as eight or ten sections, and they can't do it on that.

Q. Every encouragement should be given by the authorities to bring about conditions which will result in the preservation of the range?

A. Yes, sir, it should.

Q. What do you think of the policy of the Federal Government in encouraging desert land and homestead entries on lands in the State which have not been definitely proven to be capable of raising crops annually? What do you think of the dry farming business in general?

A. What do I think of the dry farming business? I don't think very much of it.

MR. SAINT: You have no dry farming land in your country?

A. Yes, we have, too, considerable of it. That is, they have attempted to make dry farming. They have made dry farming out of it too. They haven't done anything with it. Now we are very much in favor, that is I say "we", the cattle interests in the country, are very much in favor of a leasing system providing that leasing system covers a tenure of not less than ten years, and should cover more than that for the simple reason that the remaining lands, which are Government lands, are of such a character that there has got to be a great deal of money spent in developing waters, fencing and getting it in shape to handle any stuff at all.

Q. To what extent do you think, amongst the people whom you

know, the installments are being paid in on the State lands which have been contracted for sale?

A. I am not able to answer that, Governor, I don't know just what percentage.

Q. I will ask Mr. Field.

MR. FIELD: They are being paid pretty well, pretty close, that is not the installments, the interest on it is being kept about up, very little of it going back, some of it paid.

Q. Of course they have the option to pay at any time?

MR. FIELD: Yes, sir, pay at any time.

MR. ASPLUND: Mr. Culberson, in order to get into the record a more or less perhaps collateral matter, do the cattle interests prefer this 30 year contract in preference to leasing, and if so why?

A. Well, they would prefer the leasing if they could get a tenure of the proper number of years, where on the other hand there is a great many that prefer purchasing in view of the fact that there might be a piece of State land selected that adjoined very valuable property, well water, which place, in those instances, they prefer purchasing.

Q. In case they could have a ten year lease would the lease be worth more than 5c an acre?

A. I don't think so, not when you take into consideration the cost of improving that so as to make it worth anything.

Q. Of course under the 30 year contract they pay practically, in your part of the country, 15c an acre for the advantages that accrue from long tenure and possibility of improving.

A. Yes, and then those areas that you speak of there are adjoining patented properties where they can use this piece of land and water their cattle from their own privately owned lands, which overcomes the expense of developing waters on those State lands.

MR. HAGERMAN: Do you think it is posible to equitably classify grazing lands on the basis that the Tax Commission is now classifying them? I don't mean, in putting this question, to make any criticism at all on that classification, as I know the Tax Commission is doing its utmost to arrive at an equitable basis, but is there not such a divergence in the value of grazing lands on account of quality of the land and continuity of water, in order to reach an equitable appraisement every section would have to be separately examined?

A. I think it would, that is if you arrived at an exact valuation. Now I can show you areas in this State, small areas in certain places where it won't require ten acres to carry an animal. Perhaps five miles from there I can show you an area that would require a thousand acres.

Q. Take it all in all how frequently ought there to be water on a grazing area in order to make it economically valuable for the cattle business?

A. That depends entirely upon the character of the country. You can take an open smooth country it is a very easy matter for cattle, without any detriment to them at all, to travel a distance of three miles for water. Take in some country, more particularly the Forest Reserve I am referring to now, I will show you areas there where a cow is up against it where it has to travel half a mile for water. Those are things that are governed entirely by the kind of country you are in.

Q. On the whole any land more than three miles away from available water is not very good for grazing purposes?

A. It has very little value attached to it, very little.

Q. So in comparing the value of any grazing lands the matter of water is of prime importance?

A. It is of prime importance.

Q. Irrespective of the quality of the grass?

A. Yes, sir. There are many good areas of grass land in this state that have the best sod, or amongst the best sod of any lands we have, that are absolutely worthless, due to the fact they can't get water. There is only one way, in many of those places they have drilled for water. We have a section of country we went down some twelve or thirteen hundred feet in three wells trying to get water. You have to go to an expense of perhaps a thousand dollars to build ground tanks, which requires some length of time to get those in position where they hold permanently.

MR. SIMMS: In times of drought, in emergencies how far can cattle go to get water and still survive?

A. Well, that depends entirely upon the character of the country they are in.

Q. Say it is level country?

A. Oh, they will travel, I have known cattle to travel as much as eight or ten miles for water.

Q. You would say that would be the maximum?

A. I would say that would be the maximum. They would never thrive and prosper traveling that distance, even on smooth ground.

MR. SAINT: Mr. President, I would like to say a word in justification of the classification of grazing land made by the Tax Commission. In fixing a minimum value of grazing districts the Commission was fully aware that in fixing those minimum values of districts which are primarily based on the rainfall of that particular district, the Commission knew that there were certain aras of grazing lands that wouldn't measure up to that minimum value, which could only be determined by classification by competent men in the employ of the Commission, which we have undertaken to do wherever there has been a protest made. Our men are engaged in that business now. We have four men that are doing nothing else now but classifying these grants and tracts of land where a protest has been filed with the commission against the minimum value, and we have reports from some of them now. In one tract of 86,000 acres they reported 2,000

at $1. That evidently was proper. It was an area that was in that grant that was sparsely grassed and sodded, etc. I am only making this explanation to justify the Commission in its classification.

MR. HAGERMAN: Mr. Culberson, do you know how the assessment of cattle interests compares with the assessment of similar grades of cattle over the line in Arizona?

A. I understand, and I think I am correct about this, that the valuation of cattle in Arizona, that is the average, will run something like $3 or $3.50 per head more. Now we maintain this. We are on the dividing line between the two markets. Our freight rate is necessarily higher. There is a longer shipment.

Q. Why is our freight rate higher to the market than Arizona's?

A. Arizona has a California market and New Mexico has a northern market. Now you can take the eastern part of the State and the freight rate is $1.50 less per head on average stock than from the point I live at and we claim that difference is brought about from that point.

Q. From the standpoint of public policy the ownership of grazing lands in private ownership tends towards the conservation of the lands, much more than if they were left in public range?

A. Absolutely so. I would like to state, while we are on that question, when speaking of grazing lands and the value of grazing lands in that country, and carrying capacity, there is a large portion of I will say the entire state of New Mexico that has Loco. Now you can take in our portion of the country I can show you sections of tne country down there, as much as ten or twelve sections of it, where I don't believe I am exaggerating a particle to say you could have cut with a mower as much as a quarter of a ton to half a ton per acre of Loco, and it comes about every three years and some times oftener, depending upon the season. If you can place any value on that land without spending about $40 an acre to dig that Loco up I would like to know how it is going to be done. That is an element to be taken into consideration when placing a value on these grazing lands.

Q. Has your observation led you to believe that there is any regular cycle in the dry and wet series of years in this state, any regularity in it?

A. I thought I had until this one came.

Q. What did you think you had before?

A. It has been my observation since I have been in this country, and I have passed through five of them, five droughts which come every seventh year and having had that drought two years ago this was my big rainy year, which didn't come. We had it last year and it should have been greater this year and continued for the next two years and dropped back into drought the seventh year.

Q. Don't you think the seven year period has generally worked out?

A. Yes, sir, because I have watched it now for five drought years.

Q. You think that matter is so surely ascertained it can be relied upon?

A. I do. I firmly believe in it myself.

MR. HAIG: The stock interests in the State do not resent or object to taxation which calls upon them for a regular contribution each year, irrespective of whether they have had a bad or a good year, except as that is reflected in the size of their stocks. That is, you are called upon to pay each year a set sum on the valuation of the lands, irrespective of whether it has been a good or a bad year, aren't you?

A. Yes, sir.

Q. Now the fact that perhaps you are called upon to pay the same amount in a bad as a good year doesn't seem to be an injustice, you are quite satisfied to do that?

A. I can only answer that in this way. I believe the livestock interests in the State of New Mexico pay their taxes about as willingly as most any other industry; that is, those that pay any taxes at all. I know of some few who don't pay any taxes at all.

Q. With regard to this accuracy of assessment, is it your impression that in the case of holdings of men who are interested in the cattle business there are considerable areas which do escape assessment entirely of the land?

A. You mean lands owned by the stock men?

Q. Yes.

A. I don't know. I don't believe there is, because they can get the lands all right.

Q. Is the state accurately enough surveyed so that the lands are entered at their proper quantity on the assessment roll?

A. I believe it is.

Q. In view of the rather small valuation per acre and the expense of careful appraisement as a result of visits of assessors to local sections, do you think the state is justified spending any very large amount in revising assessments of lands?

A. Well, I don't think it is.

Q. That is, you think the present method of establishing a flat minimum with a provision for correction by a few field agents, achieves substantial justice and to spend a considerably larger sum to make a very careful examination of assessments wouldn't be justified?

A. I don't think it would be justified. I think they have arrived very correctly at these lands the way they have classified them.

Q. The lands which are now being used by the stockmen for their purposes, is there any prospect that they will have a value for any other use in the future than that for which they are now being used? Are they perpetual stock lands, in other words?

A. They are perpetual stock lands, never could be anything else without rainfall.

Q. Is it the general expectation of the people who own those lands that with the change in general conditions that we may expect in the way of increased population and so on, that these lands will increase in value because of a possible increase in the price of stock products?

A. I don't think so.

MR. SAINT: I would like to ask Mr. Culberson a question. I would like to ask him if he can make an estimate of the number of cattle that are grazed on public domain compared to private ownership, land in private ownership?

A. No, I couldn't answer that, Mr. Saint.

MR. SAINT: It is a fact that there are a great many cattle. I don't mean larger herds, but I mean smaller ownership where they may own just 160 acres, probably with water, that have from 100 or 150 to 200 head, or maybe 500 head, that they are fed almost entirely on public domain. Have you any notion as to the percentage of cattle in the state that would run on public domain?

A. No, I have not

Q. You couldn't make an estimate?

A. No.

Q. You know there are—

A. I know a great many instances where they run on public domain.

Q. And have really no great expense as to investment in the range other than their little 160 acres?

A. Yes, sir, that is true in many instances.

MR. HAGERMAN: Was there anything else, Mr. Culberson, you wanted to develop to put into this record?

A. Well, I would like to state this, that relative to raising more revenue for the purpose of defraying the expenses of the Government, it occurs to me that there is a thing that should be gotten out, if possible, and that is to get every man in the country who is a citizen, on the tax roll. Now we will take even the ordinary laborer. I think he should pay some taxes. It will make a better citizen out of him. Then take the high salaried man where we build school houses, we employ school teachers, we educate their children, we give them the protection of the laws of the country, we build roads for them to drive on and enjoy themselves, they participate in those pleasures just as much as you or I or any other man does without one dollar of taxation and the moment you make a man a part of the Government, make him a responsible citizen by paying some taxes, you make a better citizen out of him. That is something that I have often thought of and I think some day it should be reached.

MR. HAGERMAN: The matter has been discussed before here and I think everyone agrees that there is a great class of citizens who do not pay any taxes and who should?

A. I believe that is all I want to say.

MR. HAIG: What do you think would be the best method of reaching this class you speak of? Have you any definite method of taxation in mind? Would you approve of an income tax?

A. It occurs to me that is the only possible way to reach it.

Q. Would there be any objection from the stock interests to an income tax which would apply to them as well as all receivers of incomes?

A. I don't know. I never discussed that with anyone.

Q. Have you thought of the problem of offsetting the taxes, which has been discussed here? That is, for instance, if an income tax were in effect would it be just to permit a person who has paid a personal property tax to use his tax receipt in payment of his income tax?

A. I don't know as to that without giving it a little more study.

MR. HAGERMAN: Governor Pankey, you have had as much or more experience in land holding and the cattle business than anyone in the state. If you feel so disposed we would be very glad indeed to hear from you.

GOVERNOR PANKEY: I don't know that I have anything special to say. I am willing to answer any question you want to ask me.

MR. HAGERMAN: I would rather have you give us your views.

GOVERNOR PANKEY: I agree in the main with Mr. Culberson, with nearly everything he has said, although perhaps we don't understand each other like Mr. Sully and I do. At the outset he said the cattle men were in a very prosperous condition. I think he is joking about that because they are not. The cattle men have not had the advantages the other lines of business have during the recent period and the recent war. The cattle men are not making the money now they made when they sold yearling steers at $16 a head. The other matters he brought out I agree with him identically on, on almost every proposition. Mr. Culberson has had a world of experience and he knows the game from A to Z.

MR. HAIG: May I ask whether you agree with Mr. Culberson's statement about the prospect for a future increase in the value of the lands?

A. Future increase in the values of the land? I didn't understand what he said.

Q. I asked Mr. Culberson whether he thought there was any considerable prospect for an increase in the value of the lands which were now being used as grazing lands. He replied he thought there was not.

A. Well, the only thing that might increase the lands is—and that wouldn't be State lands either, it would be individual lands—the only hope I have in owning land in this State is getting oil or mineral on them. You know that is what some of us buy lands for.

MR. HAGERMAN: You don't think there would be any appreciable increase in the value of lands you own for grazing?

A. No, not possibly. That is the reason I have never bought State lands. The State is reserving the right to oils and minerals. Outside of that we can't afford to own them.

Q. In other words, the only reason you would invest in lands outside of their stock carrying qualities, is some future possibility?

A. Remote possibility, yes, future development in the way of minerals and oil, which I really have great confidence in.

Q. Are you fairly well satisfied with the assessed values of your grazing lands?

A. Yes, I think they are quite fair and I am assessed as high as anybody in the State too.

Q. On the whole do you think the classification is fairly equitable?

A. Yes, it seems to me it is. Once in a while a dry piece of land without water is assessed at $2 an acre, or $2.25, which is really higher than lands well watered and fenced at $3, but ordinarily speaking, I think the assessment is very fair.

MR. HAIG: If you were a member of this Commission, Governor Pankey, would you be in favor of recommending a change in the assessment organization of the State?

A. Well, I doubt if it could be improved.

Q. That is, you favor the retaining of the locally elected assessors by county?

A. Well, that is the only point I wanted to bring out, the one weakness about our assessment, especially in dry goods and stores, is getting their property on the rolls. You get every acre of land on the rolls, if there is any way on earth to keep an acre of land off the rolls I have never discovered how it is done, but I think Mr. Culberson's figures, that 90 percent is given in, is fairly correct.

Q. Do you think there is any hope of improvement, if improvement is needed, through the system of locally elected assessors?

A. Well, I don't know. It don't seem to me there is much hope of getting much improvement through the assessors, yet I don't know how else you would do it. The assessors sometimes don't have the judgment that they should have, and they are not paid enough to get men that can do that work in the right way . They sit in their office and allow you to come in and they don't investigate. The weakness is in our assessors in the State, and a lot of our assessors just hold the office and hire somebody to do the work.

Q. So the situation is pretty bad as it now exists?

A. Well, it isn't good. It isn't pretty bad.

Q. Do you think it might be improved if put in the hands of a central organization?

A. I don't know about that I am sure. It could be improved by electing a different class of assessors.

Q. Do you think the possibility of improvement will come that way?

A. Yes, it is bound to come that way. Other States have. Kansas has, other states have, improved that way, got a more equitable basis and men of better judgment. As a class we have a pretty fair class of men as assessors, but in some counties the assessor's judgment is not good on those things. They really don't know. They mean to be right, they mean to be honest, but they really don't know.

Q. You don't think that the poor quality of assessors elected in some places is due to the election of them rather than their appointment and method of selection?

A. Well, of course in this state they are elected; put on the ticket and elected and they are new in the business and not familiar with it.

Q. Do you think they are poorer because they are elected and that you might get a better quality if they were appointed?

A. I doubt very much if you would get much better men if they were appointed. Politics are in everything you know. You are not acquainted with that part of our State. Just as long as you have got politics in everything you won't get much improvement. Of course I don't believe that an assessor favors a man on account of politics in this state at all, I don't believe that.

Q. As a practical politician the recommendation for authority in a central taxing board wouldn't seem to you to be practical?

A. No, I don't think it would. I don't claim the interests would want anyone that would favor them. I only go by what other states have done. We still have this basis in older states and it is working fairly well.

MR. HAGERMAN: Where?

A. I never lived in but one other state, in Kansas.

Q. You own a great deal of land there, don't you?

A. I have land there now, yes, sir. There are no other states I have paid taxes in. That is the only other state I have lived in since I was of age.

MR. ASPLUND: With reference to the relative assessment in Kansas and New Mexico, do you think you pay higher taxes in New Mexico than in Kansas?

A. On lands you mean?

Q. Yes, or on any unit?

A. Well, our lands are worth so much more per acre there, you know, it doesn't take such a rate of tax to get the necessary amount. There is more property taxed.

Q. Do you consider you pay a higher percentage of your income from property in Kansas than in New Mexico?

A. No, we don't pay as high. Now my lands there net me about $5 an acre a year and the lands here ain't worth that, you know.

MR. SAINT: You probably know that Kansas' total assessed value in 1907 was only $425,000,000, exceedingly low?

A. Yes.

MR. SAINT: They abolished the elective assessor, he was appointed by the county commissioners and the State Tax Commission was created. Between 1907, this is a matter of record, between 1907 and 1909 the valuation of Kansas jumped from $425,000,000 to $3,425,000,000 and their levies dropped from an average of over 4 percent to 7¾ mills. Now the point I am trying to make is that by abolishing the local assessor, elective assessor, and having him appointed on his knowledge and capacity, has brought about that change of conditions in Kansas. What I contend is that if we can do something like that in New Mexico we can increase our valuation $100,000,000 and therefore I think it ought to be done.

GOVERNOR PANKEY: Of course land in Kansas went up four or five times in value per acre, you know, increased in value?

MR. SAINT: In their investigation there it was demonstrated certain farm lands had not changed in value on the assessment rolls for 40 years.

A. I am not very familiar with the Kansas assessment. I simply pay my taxes there and have never lived on my land in my life there, don't go on it once in three years.

MR. HAYDEN: Governor Pankey, your land is valuable principally for grazing at the present time?

A. In New Mexico, yes, sir.

Q. What is it assessed for per acre?

A. I think $3 and possibly some of it $2.25.

Q. And what taxes do you pay per acre, can you state?

A. I don't know, I don't remember. I never figured it that way.

Q. Do you rent your lands?

A. Yes, and use some of them.

Q. Do you receive enough rent to pay the taxes?

A. Oh, yes, to pay the taxes.

Q. And pay the interest on the investment at $3.

A. Oh, no. The lands I own in New Mexico don't net me two percent in New Mexico. It takes the lands I own in Kansas to keep me alive in New Mexico. I was fortunate enough to have that before I came here and kept it. If it wasn't for my Kansas land I couldn't live in New Mexico, I would go in the hole $25,000 a year.

MR. ASPLUND: You say your investment nets you two percent?

A. Practically, yes.

Q. That would be practically absorbed by taxes.

A. I mean after the taxes are paid. I don't probably get the value of my lands here in New Mexico. I don't believe after my taxes and expenses are paid they net me over two percent.

MR. HAYDEN: On what valuation?

A. $3.

MR. HAGERMAN: Mr. Culberson, just to revert a minute, do you know whether there are great numbers of cattle in these reserves in the State that are not paying taxes?

MR. CULBERSON: Owned by the Indians?

Q. Owned by Indians or by others that are grazed on Indian Reservations?

A. I have understood that was the condition.

Q. Do you know of any way they could be reached that has not been resorted to?

A. I would like to ask this. Can you reach the Indians' property to tax it, the cattle and horses? Is there any law in the State? They are wards of the Government, aren't they?

MR. HAGERMAN: Won't you make a reply to Mr. Culberson's question in that respect, Mr. Clancy?

MR. CLANCY: I would say the most of our Indians in New Mexico are Pueblo Indians and while the Indian office has been setting up the doctrine that they are wards of the Government and we can't get at them, that is a very doubtful proposition and it is violently disputed. My own opinion is that they are citizens of the State just like any other citizens and their property can be taxed like any other property and when we get to a final decision of that in the courts I hope to see it decided that way

MR. HAGERMAN: Does their citizenship depend upon the exercise of the franchise?

A. No. A man may be allowed to vote or not allowed to vote. Women are citizens and haven't heretofore been allowed to vote and they are taxable and their property is taxable. The franchise is a mere incident of citizenship.

Q. In other words, you think the taxing authorities of the State would be justified in assessing the live stock of the Pueblo Indians at this time?

A. I believe so.

Q. Do you think they ought to try to do it?

A. I think they ought to make the effort to do it.

Q. You think the first step, then, towards reaching this unassessed personal property would be to go after it and try it?

A. Yes, and we would get into the courts with it then.

MR. ASPLUND: Mr. Chairman, I think it would be found, probably, that most of the live stock in question would be on the Navajo

Reservations and my impression is that there is property in McKinley county and San Juan county that perhaps is in private ownership, subject to taxation, that runs on that land. Take the property of Indians on allotments, that certainly is taxable off the reservation.

MR. SAINT: May I make a statement about the sheep? The Tax Commission here during last year took up with the agent of the Pueblos of New Mexico as to the number of sheep owned by the 18 Pueblos of the State and the figures we got was that there are 500,000 sheep owned by the 18 Pueblos in New Mexico that are not assessed. That largely makes the difference that is shown in our assessment rolls of sheep, that is it goes a long ways towards showing it.

MR. HAGERMAN: The difference between the assessed number and the Government—

A. The Government report on the shep in New Mexico shows about 3,000,000 and some thousand sheep in the State while our assessment rolls only show 1,800,000. There are 500,000 of that difference owned by the Pueblos. Now the Navajos they didn't have that information in the agency of the Pueblos and I tried to get it from the agency of the Navajos but never got it.

MR. HAGERMAN: Mr. Clancy your remarks as to the assessability of the Pueblo livestock wouldn't apply to the Navajo Indians, would they?

A. I don't think they would. I never have had occasion to consider the condition and status of the Navajo Indians, of the property of the Navajo Indians at all.

Q. The Navajos and Mescaleros and Jicarillas are on a different basis from the Pueblos?

A. Quite so. They are really wards of the Government, I have no doubt. I wouldn't be prepared to give an opinion on that.

MR. HAGERMAN: Would it be possible, Mr. Saint, for the Tax Commission to initiate a movement to bring about the assessment of Pueblo livestock through local assessors?

A. If we could get any man brave enough to go onto these Pueblo reservations and assess their property and get out alive I think we might do it.

MR. CLANCY: I don't think it would require any courage to do that. The Pueblo Indians are as peaceable as any other citizens we have.

MR. HAGERMAN: Wouldn't it be possible for the government of the state to take the matter up through the Federal Government and bring it to an issue?

MR. CLANCY: The only way you can bring it to an issue is to bring it into the courts and have a judicial decision about it. We never have had any definite and clear decision in recent years. In two very early cases in New Mexico our courts held that the Pueblo Indians were citizens of New Mexico just like any other citizen. I have no doubt if any Pueblo Indian was to vote, saw fit to do so, he could register and vote.

Q. If the property of the Pueblos could be reached and assessed the assessable valuation and taxes paid would be a very material increase, would it not?

A. It would undoubtedly.

MR. SAINT: In assessing property it is necessary to locate the owner. We couldn't assess a Pueblo for the sheep that is owned in the Pueblo. We would have to hunt out the owners in each Pueblo, the same as in all other classes of property, wouldn't we?

MR. CLANCY: I think that is true. I don't know the status of live stock, whether it is owned by the Pueblo as a corporation. Each of these Pueblos is a corporation.

MR. SAINT: I know they are a corporation but I don't believe they own their property in severalty.

MR. CLANCY: If they do of course each owner should be assessed for the property he owns.

MR. SAINT: I had quite an experience, as you may know, as the lessor of the Acoma Grant. I know that all the Indians there owned their horses and cattle and sheep in severalty.

MR. CLANCY: That Acoma experience of yours may be a little instructive about the status of these Indians. You will recall after you had made a lease of grazing lands of that Pueblo an action was brought by the United States attorney to cancel and set aside that lease on the ground that the Indians had no power, no control over the lands, that the Government was controlling them. That suit was allowed to stand on the docket for a year or more and then was abandoned by the Government. They gave it up.

MR. SAINT: They abandoned it on the decision of the Supreme Court on the former suit of the Taos Indians against Antonio Joseph.

MR. CLANCY: The Supreme Court wouldn't decide the main question there, they dodged that.

MR. SAINT: I know we got our lease on that property.

MR. CLANCY: Yes, but that was a decision of the Supreme Court of New Mexico.

MR. SAINT: We based our lease on the decision of the Supreme Court of the United States.

MR. CLANCY: Well, now, I am quite familiar with the main question that we wanted decided in those cases. There were two cases. The main question was as to whether these Pueblo Indians were citizens or not and the Supreme Court declined to pass on that question. I have had occasion to examine that a great many times and they said, "we have been urged to pass upon the question and declare that these Indians are citizens but it is not necessary for the decision of this case." That is what they said, in substance.

MR. HAGERMAN: It still never has been definitely decided by the Supreme Court of the United States?

MR. CLANCY: No. In a recent case it has been assumed by the Indian office that a recent case of an Indian named Sandoval, or

a man named Sandoval, really decided in their favor but it does not. A careful examination will show it does not, although it is a very unsatisfactory decision.

I would like to say a few words on the subject that Governor Pankey was asked about. I think that the most of us who have given any attention to the subject, will agree that the greatest trouble we have in New Mexico is not as to our legislation on the subject of taxation, but as to the administration of the assessment of property and as long as that is allowed to remain in the hands of local county elective assessors who are nominated principally for their abilities as vote getters, we won't have any substantial improvement. I am quite sure of that. I have had, for a number of years, quite a definite idea of improvement in that direction, although I don't think I have a great many sympathizers in it. I would be glad to see created a State Department of Taxation who have control of everything from the assessment up. Now it would be impossible to get the legislature to adopt that in the face of the opposition of the assessors in office, but that might be provided for by making those assessors now in office, or at the time of the passage of such an act, remain in office as subordinates of the State Tax Department, under their control and under their direction.

MR. HAIG: With the power of removal?

MR. CLANCY: With the power of removal in case of incapacity or incompetence, and I believe such a measure might be carried through and after the expiration of the terms of office of the assessors who had been elected, for the State Tax Department to have the power and authority to appoint all assessors all over the State, and in such numbers as might be necessary to do the work. If the Attorney General of the United States, for instance, can manage all the legal business of the Federal Government all over this great country from a central office in Washington, there is no good reason to apprehend that such a department of the State Government couldn't manage this question of the assessment of property and the collection of taxes. The Commissioner of Internal Revenue has control of an enormous business extending over the whole country, and a single State could certainly, through a central State Department, manage and control such matters as this more efficiently and the responsibility would be definitely fixed for any mal-administration or any failure.

MR. HAIG: May I ask a question, Mr. Clancy? Do you think Governor Pankey's fears that even with a central body of that sort politics would intrude, are justified?

A. I think that you can't as long as human beings are such as we are, you can't create an impossibility of political considerations interfering, but you can diminish it, and it will be greatly diminished by the centralization of power and responsibility and authority.

Q. Do you believe a body as now constituted, consisting of three, each serving six years, one dropping out each two years, would insure a fair degree of safety that politics would not intrude?

A. I can see some argument in favor of such a Commission on that score, but I firmly believe that it would be better to have a single Commissioner, or head of this State Tax Department, just as

we have a single Attorney General of the United States or Commissioner of Internal Revenue, or Secretary of the Interior.

Q. Would you favor a long term or make him change his term as the Government changed?

A. I would favor a long term. I think that would conduce to greater efficiency.

Q. Do you think such a proposition a practicable one? Do you think there is any chance of getting it adopted?

A. I think we ought to make an effort to do it and I believe there is a chance of getting it done. I did not know about the appointment of Assessors in Kansas, as Mr. Saint has told us, by county commissioners, but I have had that in mind and I think I prepared a bill perhaps on more than one occasion, but I couldn't get the legislature to pay attention to it.

Q. You wouldn't favor that method of selection in this state though?

A. I think it would be better to centralize the power in a State Department.

Q. If that was not practicable do you think it would be an improvement to have them appointed by the county commissioners?

A. I believe it would because the county commissioners would be respectful of the public sentiment and public feeling and public sentiment would be in favor of getting efficient men. I was in Tierra Amarilla last week and a friend who was there with me, told me he had been in the Assessor's office and now, in the middle of August, he found that the tax roll for this year was less than one-third completed, and that is what happens in I don't know how many counties. Mr. Saint can tell us about that, but that same thing happens again and again. I personally had experience when I was a member of the State Board of Equalization. In some counties where there were men who were efficient and capable, they neglected their work. I remember particularly Dona Ana county as an example of that kind. The assessor there was a really able, capable man but he didn't do any work, he hired somebody else to do it and he neglected it and as long as the vote getters are nominated for such offices we don't get the best talent and I believe the County Commissioners would make better selections than we get by our present method, but I believe it would be better have it in a central State Department.

MR. SAINT: Governor, may I make a statement? Mr. Clancy brought up the question about the delay of the county rolls. The rolls should all be in the hands of the Collector, under our law, on the first of December. Last year I am not sure, Mr. Joerns I think can tell, I don't believe they were half in at the first of December. They weren't half prepared and in the hands of the Collector. The San Miguel county roll did not get in the hands of the Collector until April this year. Now, the city of Las Vegas, I am not sure about my figures, but I think Mr. Blood told me, the mayor of Las Vegas, that they had to borrow $6,000 to carry their city until they collected the money. There should be a penalty on the assessor to get these rolls in within a certain time by the first of November, so that people can pay their taxes before the delinquency applies.

MR. HAGERMAN: Mr. Aguilar, as a member of the State Tax Commission, and also being particularly interested in the sheep business, inasmuch as we have made no arrangements for hearing that interest represented we would be very glad to have some remarks from you as to the assessment of sheep in the State, if you care to tell us?

MR. AGUILAR: About what kind of statement do you want about sheep?

MR. HAGERMAN: To what extent do you think the sheep are on the tax rolls, take the State as a whole, what percent of sheep are returned for taxation?

A. I do not know. I couldn't answer that because I do not know how good the assessors have been in getting all that property on the rolls

MR. HAGERMAN: From the Tax Commission's standpoint, Mr. Saint what do you think of that?

MR. SAINT: What percent of the sheep on the roll? I couldn't say exactly, only as taking the Government estimate, which is an estimate from their method of compiling this data and taking out the Indian sheep, as I mentioned a while ago that the Pueblos have 500,000 not on the rolls, and then a lot with the Navajos, taking that as a basis why there must be about 85.

MR. HAGERMAN: 85 percent?

A. Yes. Then there may be more. I can say the whole proposition is a kind of guess. It is true that sheep can be arrived at, the number of sheep, because every herd of sheep is under control and they know how many they have got. Cattle on the open range can't be arrived at like sheep because any sheep man can count his sheep any day and he knows what he has got. Isn't that right Mr. Aguilar?

MR. AGUILAR: That is right.

MR. HAGERMAN: What do you think of the assessed valuation of sheep. Is it adequate or is it high or too low?

MR. AGUILAR: I think it is adequate.

MR. SAINT: I think they ought to be higher on the market value.

MR. HAGERMAN: Do you think the assessed valuation of sheep is comparatively just, as the assessed valuation of cattle, take the State over?

MR. SAINT: No, I don't believe the sheep are on the same level.

MR. HAGERMAN: What percent less do you think they are at the present time?

MR. SAINT: Well, of course, the market on sheep and wool today, right at this particular time, is in very bad condition on account of there being no market for sheep or wool. A man couldn't sell his wool today on the market, probably for to exceed 25 or 30c when they got around an average of 40 or 45 last year; I don't remember the exact figures.

MR. HAGERMAN: Ignoring the present depreciation and taking the average of four or five past years, how do you think the sheep have been on the whole assessed in comparison with cattle?

A. Well, I want to qualify that statement with the action of the Commission in 1919. On account of the two or three years drought and the immense losses that the cattlemen and the sheep men sustained on account of the drought, in response to a general plea of the stock interests of the state the Tax Commission reduced the value of sheep 25 percent and cattle 12½ percent. That was in 1918. In 1919 the Tax Commission felt we should restore that reduction and there was an argument made that the sheep and cattle men had not recovred their losses and they should be allowed to go a longer period at the same rate, or another year at the same rate. The Tax Commission didn't feel that that was fair as 1919 was an exceptionally good year for grass, but we compromised on an advance of half of what we took off. That is we advanced the value of sheep 12½ percent and cattle 6¼ percent, and that is the value today.

Q. After your adjustment do you think sheep on the whole as to numbers and per capita value are on as equitable a basis of taxation as other classes of property in the State?

A. I can't help but think—I think Mr. Aguilar differs with me on this he thinks it is about right—I think we should have restored all that we took off, that would have put 12½ percent more than we did put on the value of sheep but under the present pressure under which sheep men are now running, why probably that is about as good as we could get until the market recovers. You must take into account certain market factors always in determining the value of anything.

MR. HAGERMAN: Mr. Aguilar, do you think the sheep in Mora county are all returned?

A. Nearly so, yes.

Q. On the whole you think the taxation of sheep in the State is on an equitable and fair basis?

A. I think so.

MR. ASPLUND: Mr. Aguilar, what do you think of the dates for assessing sheep in New Mexico. What do you thing of the advisability of having a different date for the assessing of sheep in New Mexico than other property? Do you think the present date of May 1st is as advantageous as could possibly be selected for the assessment of sheep?

A. I think that is about right, the way it is now.

Q. The last legislature made a change from March to May.

A. I think May is the right time because usually the heavy losses come just a few weeks, sometimes two or three weeks before lambing and a good many sheep are lost after March 1st.

MR. SIMMS: Perhaps Mr. Aguilar might give his opinion about the desirability of a central assessing body?

MR. HAGERMAN: What do you think of the desirability of changing the present system of local assessors?

A. I think it should be changed but I do not believe the assessor should be appointed by the county commissioners. Then it seems to me you would have to appoint the county commissioners too. It would be the same thing. It should be centralized in the way like Captain Clancy suggested, some centralized power in the State when the assessors should be appointed, all of them, by one body. I think one man is enough, but I don't think it is right to have them appointed by the county commissioners.

MR. HAIG: Do you think the expense could be reduced if the assessment were centralized, as suggested, or would it be increased?

A. It should be increased, the expense should be increased because the assessors should have more time and more power to appoint some deputies to help them and I believe they should be given more time, one or two months, to finish up the assessment. The way it is now they begin the last part of February. In some places the assessor cannot go out at all on account of the cold weather, snow or something of that kind, and he should be given more time too.

MR. SAINT: In the dates of assessment, I don't believe there is a cow man in the State of New Mexico but what would disagree with me on this proposition, that cattle should have a different period of assessment from the first of January. I believe, as every cow man knows, and I am speaking from experience in the cow business myself of 12 years here in New Mexico, the great losses in cattle on the range comes after, well I will say after the first of March. Mr. Culberson, how is that?

MR. CULBERSON: I think that is correct. The hardest months we have during the entire year in the cattle business is May and June.

MR. SAINT: I was going to say, my experience in losses on the range is that our losses come after the winter is over and there isn't a cow man in the State—I believe this is a safe statement that Mr. Culberson will bear out, and I know he has had long experience in the business—that 85 percent of his annual loss is after the first of March.

MR. CULBERSON: Yes, that is correct.

MR. SAINT: Therefore, if he is assessed on a given number of cattle on January 1st, he must protect himself against this loss in his rendition. It may be more or it may be less, but he positively knows he is up against this loss and he can't avoid it. There is now and then a year where there is plenty of grass that will carry him clear through, but cows with calf, there is where the big loss comes, and in the breeding range I think it is safe to say the biggest percent of his loss comes in May and June.

MR. HAGERMAN: When would you suggest the assessment be made?

MR. SAINT: If I was going to base my reply on my own experience I would say the first of July, if you want to get the actual number of cattle in the State.

MR. HAYDEN: That would make three assessments.

MR. SAINT: I am just answering the question. I am not talk-

ing about the time of year. I think all property in the State should be assessed as of July 1st, instead of January 1st.

MR. HAGERMAN: Mr. VanHouten, yesterday's discussion was almost entirely confined to mining matters and it occurs that perhaps you have something you would like to say in connection with the general subject of taxation before you leave. Is that true?

MR. VAN HOUTEN: You mean on cattle? I never owned any cattle.

MR. HAGERMAN: Not particularly cattle, but in connection with any phase of this whole subject before the Commission. If so, we would be very glad indeed to hear from you.

MR. VAN HOUTEN: Well I believe, Mr. Chairman, that one of the fairest taxes that can be put on is an income tax and I believe, very much believe in an income tax, and especially a graduated income tax. I believe that the concern or the person that is prosperous and that has the ability to make a large income should to some extent bear the burden of the man that doesn't get as large an income. At the same time I think that where an income tax is assessed the basis should be a very low minimum. I think that the minimum of a thousand dollars, which has been suggested, is probably not quite low enough. I think probably a minimum of five or six hundred dollars, which is effective in some countries, is probably better, because it forces everybody to pay a little something to the support of the government.

I think that the general objection to the payment of taxes, I don't quite agree with what we have heard from different people here the last few days, that most everyone is willing to pay taxes, I think it is rather the reverse. I think most everyone is unconsciously a tax dodger. I think that is largely caused because we feel, and that is the case both in the payment of state and county taxes and federal taxes, that a good part of the money that is paid for taxes, paid in taxes, is wasted by inefficient administration of government. Personally I believe the taxpayer expects too much from the government. I think that while there might be a good deal of waste in government, to a certain extent, I don't think there is more waste in government than there is in the administration of other affairs, except we see more of it and the government of course is always in the limelight. I thing that in our State government a good many improvements might be made, as was suggested here this morning, in the appointment of assessors by the taxing board. I am not familiar enough with the subject to be able to form an offhand opinion.

There is another matter that I would like to say a few words on in connection with the mineral taxation, or with the production tax and this applies especially to coal land. If a person has a coal property and he desires to open a mine he would naturally try to put his mining plant at some central point from which he can bring all the coal of the mining property to this one plant within a certain number of years. I believe that the question that has been talked of so much of contiguous property might be disposed of by allowing large coal mining plants a certain acreage tributary to that one plant, the acreage to be dependent upon the capacity of the plant, or the ability of the plant to get out a certain amount of coal. We will assume that a plant of that kind, that the plant should be repaid to the investor

in a certain number of years; that the term of 25 or 50 years, whatever would be necessary, take for instance, let's assume that an acre of coal land, that I think is probably the average here in the state, would contain 4,000 tons. What I mean is that 4,000 tons could be gained out of an acre.

MR. HAGERMAN: Is that an adequate estimate?

A. I think that is an adequate practical estimate. We have coal land where we have recovered seven or eight thousand tons per acre and we have some where we haven't recovered any, but I suppose that 4,000, probably four or five thousand tons, would be a fair recovery per acre.

Q. Didn't the average of the St. Louis, Rocky Mountain & Pacific and of the Dawson last year amount to over seven?

A. But that was not including the acreage we have lost. We had an average, offhand we had an average of 7,000 tons, but I don't believe that you could apply that year after year on mine after mine, but after all to some extent that is immaterial. But let's assume, for the sake of argument, that it is 5,000 tons per acre. Then I think that a 25 to 50 year life for any one mine, you take the land tributary to that mine, I think it should be assessed on that basis and I think that would get away from the contiguous land proposition.

Now there is another suggestion. I questioned whether the, apparently the net product tax is not satisfactory. I think it might be considered to assess the gross product on the principle that Judge Simpson advocated yesterday ,that as you take the product out of the ground you take that much away, that much especially in coal. and as it is taken out that the assessor should get his share out of that portion of the land. That is simply a suggestion and maybe a good many people in the coal mining business wouldn't agree with me, because it would largely increase the assessed valuation of that portion of the land, but I think if you do that with all other mineral land, mineral in the ground. this land tributary to the mining plant should not be assessed.

MR. HAIG: That is the mineral contents?

A. The mineral contents should be assessed as grazing land.

MR. HAGERMAN: You would be favorable, then, in a tentative way at this time to a consideration of some project of assessing coal lands on the basis of a production of 5,000 tons per acre per annum and a life of from 25 to 50 years, and on charging the net product to a gross product basis of valuation?

A. Yes, I think that is rather an offhand question, possibly, I haven't figured it out in detail, but I think, it appears to me that wouldn't be very much out of the way.

MR. HAIG: When you say that the life should be fixed on a basis of a term of years and the capacity of the mining plant, you mean that the matter would be adjusted from place to place as the size of the mining plant would vary?

A. Yes, and you would probably have to take your averages. You would have to base your production on an average number of

years. Your capacity and production may be two different things. You might have a plant of a capacity of a thousand tons a day but there might be slack times or dull times that your mining would not make that tonnage.

MR. HAIG: You would favor an average production rather than a technical capacity?

A. Oh, yes. You would have to take an average over a number of years. You might take a three year average, that is as fair as anything could be gotten.

Q. How many mining operations have you now under way?

A. We have six plants but thirteen or 14 different mines.

MR. HAGERMAN: When you refer to mines do you mean one tunnel?

A. There are different openings, each opening controlling a certain area of land between canons.

MR. HAIG: Assume for a moment, just to give us an idea of the quantities involved, that that arrangement were worked out at say the maximum figure you mention of a 50 year life of plant, and attach to that plant sufficient reserves to care for that term, what proportion of your total college would then be classified as reserves and what would be classified as grazing land?

A. Well, let's take our largest mining plant which will probably run about 600,000 tons a year. That plant would consume 120 acres of coal a year and on a basis of 5,000 tons recovered per acre, and take that for 50 years, would take 6,000 acres, wouldn't it?

K. 6000 acres. You have how many such plants?

A. That is the largest plant, and I think that is probably the largest plant in the state. 6,000 acres would be the maximum of that one productive plant, and I want to state right here I don't know whether we have 6,000 acres of coal land.

Q. You would have to take a chance on that?

A. We would have to take a chance on that. Take a smaller plant. Take a plant that would produce, say, of which there are quite a few, say 15,000 tons a month, that would be 180,000 tons a year. Now that would be 36 acres per year. That would be 1,800 acres on a plant of that size. That would be a fairly good sized production. So there would be from 1,800 to 6,000 acres, which would be about the maximum and minimum.

Q. And there are how many plants altogether? Six you said?

A. In our case probably there are six plants of different sizes.

MR. HAGERMAN: Six units at present?

A. Six units.

MR. HAIG: So the total number of acres would lie somewhere between 30 and 60,000?

A. It wouldn't be that much.

Q. Sixty thousand would be absolutely the maximum?

A. Yes. It wouldn't be that much.

Q. It would probably be in the neighborhood of 40?

A. I don't think it would be that much. I was going to say it wouldn't be to exceed 25,000 or 30,000 acres.

Q. Which would be taxed on the basis of reserves?

A. No, it will be taxed on production.

Q. On a total holding of 6,000 acres would be approximately—

A. Out of a total holding of 208,000 acres deeded land, not coal land, and 300,000 acres of prospecting rights. Mr. Haig, there is no connection between the acre of land I described here that would be tributary to a mining plant, and the much advertised holdings that we have.

Q. Then you would favor taxing the difference on the basis of grazing land, without any recognition of the fact that there might be mineral under the land?

A. I would favor that. I think that especially if you would tax the gross value of the product, as was suggested here yesterday, I am quite sure that that is the right thing to do. I am simply offering that as a suggestion but I think in a case of that kind that you are taxing gross product and any mineral in the ground should be ignored as a matter of taxation.

Q. In the same ownership?

A. In any ownership.

Q. That is, you would favor the policy, in the case of a person owning coal land, which would be coal land not yet opened up but which is almost ripe for opening up, there should be no additional tax to that person?

A. I am inclined to believe so because I think if they were about ripe, as you expressed it, that there should be a market for anyone who has a body of coal land, and if there is a market it is pretty sure that property will be developed and the question of the additional tax he will have to pay in case of development is not going to stand in the way of development.

Q. You would favor that it should be put on the tax roll as soon as he put in a plant?

A. Of course as soon as he commenced to mine he would have to pay taxes.

MR. HAGERMAN: In a general way this tentative suggestion of yours as to the 1,800 to 6,000 area as a unit conforms roughly with Mr. Sully's suggestion of six sections?

A. It is the same idea.

Q. Well, there is no great divergence in your views as to the advisability of the possible size of such a scheme, is there?

A. I think the taxing authorities should be given a basis.

MR. HAIG: Specified in the law?

A. Specified in the law, so that there would be no controversy. Now the trouble is, I absolutely believe, in the production tax. I don't think you can apply a production tax to arrive at the ad valorem value. If you are going back to the old system of ad valorem value of coal lands it means an interminable fight between the owners and taxing authorities.

MR. HAGERMAN: Couldn't a tax which amounted in some sense to an ad valorem tax be based on gross production and the actual arrival at the basic valuation be largely in the discretion of the central authority, but be arrived at through a formula to be specified in the law itself, something on the basis that you have proposed?

A. Well, I think that might be possible.

MR. HAGERMAN: I mean, it seems to me, from my little experience there could be a good deal of misconception in regard to terms. It is more a matter of administration than of words, I mean.

MR. HAIG: Is the spread between gross and net in the coal mines of the State fairly uniform? Have you found, in your experience, that the spread between gross and net is approximately the same?

A. The spread under our law now is simply the actual cost.

MR. HAIG: Yes, but I mean in actual prices is the spread between gross and net of the different coal mining properties fairly uniform?

A. In coal mining I think it is.

Q. So it doesn't make much difference whether you take gross or four times net?

A. No, I don't think it would make any difference.

Q. You would get substantially the same result whether you take gross or net provided you multiplied it?

A. Yes, you get substantially the same results if you multiply by probably two or three, I couldn't say offhand. I imagine that probably in coal mining that the net would probably be added about by one and a half, it may be a little more, but it would materially increase the production tax as paid now.

MR. SIMMS: Mr. Van Houten would this gross production tax about which you spoke a moment ago be contemplated in addition to the tax on improvements?

A. Yes, I think the land should be returned as grazing land, or whatever value it has as farming land, and the plant should be paid on at some fair basis of assessment and in addition the surrounding land by arriving at the value by taking the gross product.

Q. Well, would it seem inequitable to you to place a gross production tax and then on an estimate of a 50 year continuity of operation of the mine to assess that contiguous coal land which has been

determined by the amount of your annual output on a basis as coal land in addition thereto?

A. Well, I think it would be unfair because I think that would be a double taxation.

MR. HAYDON: Mr. Van Houten, you said a while ago you favored an income tax. Would that be in addition to the general property tax?

A. You mean as to coal mining?

Q. No applying to everyone.

A. Well, I don't know that I have thought much about that. I notice that there was a proposition advanced here that you take the property tax and deduct it from the income tax, or take the largest of the two, whichever would be the largest.

Q. I was going to ask that question but I wanted to find out first whether your idea was that there should be a general income tax in addition to the general property tax.

A. I don't know that I could answer that, Mr. Haydon, because I haven't thought much about it.

Q. When you said you believed in an income tax, was that to apply only to mines?

A. Well, no, it really applied—I had more in mind that a great many people that we know don't return any property, they don't return every part of the property. You take the owners of stocks and bonds, I think they should pay an income tax.

Q. Then if you have a general income tax what would be your idea? Should there be a deduction on account of the payment of a general property tax?

A. Yes, I imagine so, but I believe that, going back to the coal mining proposition, I believe that the setting aside for the purpose of mine operation a certain acreage, this acreage to be determined by the production of that mining plant capacity based on an average number of years, I think that is the fairest way to get at it. You will never get at any satisfactory adjustment in any other way.

Q. If we should adopt a gross income tax, Mr. Van Houten, would that, in your opinion, penalize the small operators in the State?

A. No, I don't see why it should.

MR. HAIG: If under an income tax you were permitted to use your tax receipts for taxes on both real estate and personal property in payment of an income tax, would a concern such as yours have any income tax to pay? It would depend upon the rate of the income tax?

A. It would depend upon the rate of the income tax.

Q. Suppose it were as heavy as five percent on an income tax as defined under the federal law. Take 5 percent of your net income as defined for federal purposes and compare that with your total tax paid in the state?

A. Probably wouldn't have any tax to pay.

Q. That would be true of the railroads too, wouldn't it?

A. I suppose so, but I think a tax on net income would be a mistake. It think it should be on gross income.

MR. HAIG: It was your proposal, Mr. Springer, that an offset be allowed only for improvements.

MR. SPRINGER: That was not the proposal in the bill.

Q. What was the proposal in the bill, as you construe it?

A. That the offset should be only the taxes paid on personal property, but it would not apply, and it specifically so stated in the bill, to allow an offset by mining companies of the tax which they paid on their property, the valuation of minerals in the ground being based upon the net value of the output.

MR. SIMMS: Mr. Chairman, perhaps Mr. Van Houten might give his impressions about the desirability of a central assessing body.

MR. HAGERMAN: Have you any ideas as to the advisability of changing the local assessors, elective local assessors, to appointive assessors, either appointed by the Commissioners or by the central body?

MR. VAN HOUTEN: Well, I think it would be preferable to have assessors appointed by a central state body. I think the suggestion made this morning that if they have to be appointed by the county commissioners you wouldn't be very much better off than you are now is true and I think that if you are going to rely on a central state body you couldn't give them too much authority. If you are going to have the assessors appointed by the county commissioners I think you would be back in the same position and have the same difficulty you are having now.

MR. HAGERMAN: You spoke in your preliminary remarks, Mr. Van Houten, of the matter of waste in government; intimated that you thought one of the main duties of this Commission was to take up that question. Then you said you thought that in a general way that perhaps the government was conducted as economically as private business, except that there was more publicity as to the defects in government management. Don't you think there are many places in the conduct of both state and county matters in this state which could be materially improved?

A. Yes, I think so.

Q. Have you any specific suggestions as to how that might be brought about in the State administration?

A. No, I don't believe I have. I am not familiar enough with the state government. A great many things can be done in a government that can't be done in a private organization and often a government has to be wasteful. Take our war expense in the Federal Government, you know there is waste; go to Washington, you know there is waste, but there is a question whether that waste wasn't caused by the war.

Q. In a general way do you think the increased cost of state government since we became a state over what was the cost of our territorial government is anything near justified under the circumstances?

A. I am not familiar enough with the changes—

Q. Of course that whole question is one which the Commission is going to try to make suggestions about and is one of the most serious phases of the problem we have before us.

A. I think you can probably get many people that are more familiar with that question than I am.

Q. Well, you do know that as far as the administration of state affairs generally is concerned that it is nowhere near commensurate, as far as businesslike efficiency and economy is concerned, as a well run business, don't you?

A. Well, I only have it from hearsay.

Q. You certainly would be in sympathy with any practical suggestions that might be made for bringing about greater efficiency in the management of the government?

A. Certainly, I think that would be the only way of helping this taxing problem.

Q. Isn't that the fundamental bottom of the whole thing, really?

A. Yes, and I think the more efficient you can make the government, the more you will find the willingness of people to pay taxes.

Q. I am quite sure of that. I think it is the big item we ought to consider. As far as your companies and your own interests are concerned, do you feel that you are yourself paying a good many of the expenses of protection which you ought to get from a well organized government if the government was properly conducted? Do you feel you are getting anywhere near a conmmensurate return for the taxes you do pay now?

A. I think we are getting as much as anybody else.

Q. Well, don't you build roads and run hospitals and things that the government is supposed to do?

A. Yes, as part of our operation we consider that we have to have good roads between our different mines. We need them in our business. Take the matter of hospitals, we feel that we have to take care of our own employes in case they get injured or sick. I am not quite sure that those duties, even under an efficient system, would devolve on the State.

Q. Of course the hospitals wouldn't, but what is the general attitude of large corporations? Do they feel that they are getting anywhere near the returns from the Government that they ought to get, irrespective—in consideration of the amount of taxes they do pay?

A. I think, generally speaking, in our operations we are getting about all we can expect from the State as far as production is concerned. It might be that there is waste in the State Government

which would, if eliminated, assist us in a smaller tax rate, that I am not able to judge, but as far as general protection, I think we are getting along fairly well.

MR. HAGERMAN: What do you think about that question, Mr. Kaseman? Mr. Haig asked Mr. Van Houten about the general spread between the gross and net in the coal mine operation in the State. Is it fairly uniform?

MR. KASEMAN: No, it is not. It works a great hardship. The spread is less and less as the cost of production goes up. As to the mines in the Gallup district and this southern district, the cost of mining is very much greater than it is in the north and the spread is very much less. I think that, according to my understanding, Mr. Van Houten quoted Judge Simpson erroneously as I understand it, and as I think it was generally understood by the mining men of Silver City. I think that Judge Simpson's attitude was, and he so specified, that he thought the value of the output was the value of the mineral and did not mean the gross selling price of the output, but he meant the gross selling price less the cost of production, which cost of production should not include any depletion because depletion would be a part of the mineral. In other words, the difference between the selling price and the actual cost of production is the net value of the mineral and he thought that while our State Tax Commission in New Mexico has, in arriving at that net cost, been a little severe, possibly, according to the views of some operators, in disallowing certain items of cost, that on the whole as it now stands and as it has resolved itself at the present time through the rulings of the State Tax Commisison, that the net product at the present time is the net product of the mineral in the ground. The trouble about taking the gross output is that in the instance of a mine having a good vein of coal where the coal is very easily produced it can be gotten at very cheaply and there is a big margin of profit, and where a mine requires a great deal of labor cost, even though the quality has to be produced at a great cost, it can only be sold because it might have a superior value or because of local market conditions, and that mine would be greatly handicapped in the way of taxes as its taxes would be based on that sale price, and would have to pay much more taxes than a more easily mined property which would sell its coal cheaper and really it would act as a handicap on the man that can least afford it.

MR. VAN HOUTEN: Do you think, Mr. Kaseman, there is much difference in the cost of production of the different coal mines in New Mexico producing the same quality of coal? Let's take the three districts. Let's take the Colfax district, your district and the Gallup district. They are all producing a different quality of coal and there is a big difference between the class of coal we produce and you produce which is reflected in the selling price.

MR. KASEMAN: Take the two mines of your own company, you are handicapping yourself on your high priced mine, paying more taxes on the coal produced in your mine where you can least afford it than you are—

MR. VAN HOUTEN: In the case of our company I think that would average up but I think generally speaking—

MR. KASEMAN: Take the Carthage district, for instance.

MR. VAN HOUTEN: I don't believe even in that case, Mr. Kaseman, they would be handicapped because although it is true his cost of production would be a little higher but his selling price would be higher.

MR. KASEMAN: I would like to read into this record just one statement. One of the gentlemen of this Commission told me a few minutes ago that he heard that I had started with nothing some years ago and was a millionaire as a result of coal operations. Now I want to say to this Commission that the Albuquerque & Cerrillos Coal Company, which I own and of which I am president, from April 1st, 1918, to June 30, 1920, made a net loss notwithstanding the fact that during that time it added to its invested capital in the way of improvements over $60,000. This mining industry in this state in a few instances is in pretty fair shape, but in most instances it is not. It all comes back to the fact that this desire to have these laws changed is a sentimental desire. It is a desire born of a lack of confidence in our system. The people in the State know that the property is not properly assessed, and in that respect I want to call attention to one phase of that which we all know but which has not been written into the record, and that is the assessment of things which do not exist. Our assessors are just as lax in putting things on the assessment rolls that should not be there as they are in leaving off things that should be there. The consequence of that is that out of our $2,000,000 more or less of uncollectable taxes on the rolls a large portion of that should never have been put on the rolls. A large portion was put there incorrectly; incorrectly described, incorrectly assessed. The consequence is that it cannot be collected. All the people in the State know of the existence of this large delinquent list. They have lost confidence in our system. They feel that the system is wrong. They do not understand how such a condition can exist, and consequently there is an odium attached to the entire system of assessment and collection of taxes and every man when he pays his tax feels that he is paying too much and somebody else not enough; not because he knows anything about it, but rather because he doesn't know anything about it. I had intended, before the Commission ceased its hearings, to call attention to that fact; that that is a feature that has not been brought forth here, the fact of the incorrect assessment and the overassessment of the rolls, in that they help to increase this odium of the whole situation which exists and is just another thing that calls attention to the necessity of having better administration of the law as it does exist.

MR. HAIG: Mr. Kaseman, are you prepared to speak for Mr. Sully on that point with regard to the spread? He made a statement yesterday which indicated that the spread was very narrow on his property, didn't he?

A. It is a well known fact that they have lost money. I have been in the coal business 22 years in the southern part of the state as a retail coal dealer, and I do not know—Mr. Saint and Mr. Clancy possibly can correct me, can possibly modify my views and will wish to do so—but I do not know of anybody that made money in the mining of coal in the Gallup field since I am in the State and got away with it. Now what I mean by "got away with it" is this. That if they stayed in the business over a spread of years, as Major Reid answered a similar question the other day, over a spread of years nobody makes any money in the Gallup coal fields. Mr. Clancy and

Mr. Saint are familiar with some of those operations and I think they possibly could verify it.

MR. CLANCY: I don't know anything about the details of any of the business there, I did have some familiarity with the operations of Alex Bowie out there and there was a time when he was making considerable money and finally sold out and carried his money away with him.

MR. KASEMAN: By selling out. And the property which he sold out and on which he realized and went away, was abandoned within a year or two after that and without having realized to the purchasers any profit. I know that.

MR. CLANCY: I would like to say just a word in connection with what Mr. Kaseman has spoken of, and that is, he speaks of our bad system. It isn't our bad system so much as the administration of our system.

MR. KASEMAN: I meant the administration.

MR. CLANCY: A small item which recently came to my attention is an illustration of the bad administration. Two or three months ago a man came to me from Bernalillo county, I think his name was Francisco Trujillo, and he said somebody had told him he was published as a delinquent taxpayer in Santa Fe County; that he never lived in Santa Fe County but had lived in Bernalillo County all his life and never had a dollar's worth of property in Santa Fe County. He impressed me as being a straightforward man. I found he was assessed for personal property. I went to the tax roll and I found that about 10 years ago Francisco Trujillo appeared on the tax roll as assessed for 80 head of cattle and that every year from that time down to the present year he was assessed for 80 head of cattle. No man's cattle remains just the same for ten years. Then I learned that it was a different Francisco Trujillo. But there is an illustration of the bad administration of our assessment law.

MR. HAGERMAN: I would like to read into the record here a telegram from Mr. William R. Morley, First National Bank President, Magdalena, to the State Tax Commission. "Imperative values and taxes on live stock and grazing lands in Socorro county be reduced adverse climatic conditions coupled with financial situation as to the stock men in Socorro county many are now unable to meet their taxes and obligations," Signed William R. Morley.

MR. SAWYER: I don't know whether what has been said about taxing the gross production of mines applies only to coal mines, but if it has been intended to apply to metal mines as well I think it would work a big inequality and I think the other metal mining men would agree with me.

JUDGE WRIGHT: Take right in this county, for example, there is one coal mine where they have a charge of $1.95 a ton to get that coal from the pens at the mine to the railroad. There would be a tax on gross value which would work an undue hardship against them. I am referring to the Omera mines. It confirms what Mr. Kaseman has just said.

MR. SPRINGER: Wouldn't the gross value be determined by the value of the coal at the mine and any cost of transportation to

market or to railroad would not be considered as part of the gross value.

MR. ASPLUND: I call attention here to a situation in one district where there are two mines in 1919, one mine producing 40,554 tons, the other mine producing 44,000. In the first case the gross earnings were $147,000 in the second case $167,000. The net earnings of the first case showed a loss of $46,000—I am speaking in round numbers, in the other case showed a net gain of $27,000. In the first case the total assessed value was $16,000 and in the second case $53,000.

MR. KASEMAN: The first case was an older mine, confirming the very thing I called the Commission's attention to yesterday, that these mines do not increase in value. As you remember, the statement was made that they increased in value as they went on.

MR. SPRINGER: It was a statement made as to the increase in value of the property. The question was developed whether a mineral property was worth more before or after it was developed.

At this time a recess was taken until 2 o'clock p. m.

## THURSDAY AFTERNOON SESSION, AUGUST 19, 1920.

The meeting was called to order by the Chairman at 2 o'clock. All members of the Commission were present.

MR. HAGERMAN: Mr. Street of the Santa Fe Water & Light Company is here and desires to make a short statement. We will be glad to hear him before the regular business of the afternoon starts.

MR. STREET: Gentlemen of the Commission: I wish to make a brief statement on behalf of the Santa Fe Water & Light Company. This is a small public utility corporation and is typical of several others in the State. The problem involved in our state is one which is comparatively small in New Mexico, and for that reason it has not receive as much attention as it has in more populous states. I think I can present my case in the shortest possible manner by reciting a little history.

We appeared here in 1900 for the purpose of reorganizing a number of broken down enterprises in which large sums of money had been expended without any particular reference to the possibility of financial returns. In other words, we drew together the strings of several bad wrecks and at that time we should have been glad to have disposed of the property. If there had been any market for it at all, at the cheapest kind of junk prices. There was nothing to do, however, but to stay on and hope for future development. We have now been working on it for about 20 years and there is a very pretty prospect of realizing a fair rate of interest on the actual value of the property, but during that period we have had some difficulties in connection with the taxing problem.

As you know, in this state the public utilities with regard to the assessment are left to the local county assessor, who has very limited information and no experience with regard to enterprises of this type and very seldom gives any attention to how the problem has been worked out in other states. As a result of that experience the assessments which we have been taxed on from year to year have been absolutely arbitrary. They have had no relation whatever to the value of the property.

In the spring of 1919 there was a scientific valuation of the property made which showed that its present value, on a reproduction basis, was $460,000. Acting upon that information the local assessor placed a very great increase in our previous assessment for that year and we took it up before the Tax Commission, the Tax Commission of course being our only recourse.

MR. HAIG: That was in what year?

A. 1919, last year. The Tax Commission, however, failed to give us redress. They took the view that the reproduction value of $460,000 should be regarded as the market value of the property and instructed the local assessor to so regard the property and to tax accordingly. If that procedure has been enforced and the tax levy of about $35 per thousand had been applied to it, our taxes for this year would have been $16,100, which is 76 percent of the gross income of the Company. Our operating revenue was $81,000, operating expenses $62,000

and the gross income was $21,135. After some discussion and following a decision by the Supreme Court that the reproduction cost was not the true basis of value, they finally compromised the matter under the terms of which our assessment this year is placed at $310,000. Accepting the tax levy of $35 per thousand this makes us pay this year the sum of $10,850, which is 51 percent of the gross income for 1919.

MR. ASPLUND: You mean the excess of receipts over expenditures?

A. The difference between revenue over operating expenses.

MR. WILSON: In other words, your operating expenses include interest on your indebtedness?

A. Oh no, nothing to do with interest at all. The problem as we see it, gentlemen, is, of course, as you know better than I do, an extremely difficult one, the determination of the fair percent of the market value of the property, which is now generally accepted as the fair basis for assessed value. The principal point which we would like to see covered in our interest would be that the power of assessment for public utility corporations such as ours should be delegated to the Tax Commission rather than to the county assessor, for the reason that in the archives of the Tax Commission there is an accumulation of information on the problem and they are in a much better position to study the problem as it has been worked out in other states, than the local assessors are, and there are a number of interests parallel in general character with public utilities which are now being operated under that system. My information is that telegraph and telephone companies are assessed directly by the Tax Commission and I believe that our interests will be served, and I think the interests of the State will be served if pubic utilities such as ours could come under the same classification. We feel that there are certain factors governing the problem which have been developed by the studies of more populous states, the results of which should be applied to our case in New Mexico.

In the State of Wisconsin in the case of old established enterprises such as ours, which have in a sense got their gait,—our back history is known for twenty years,—the developments are a matter of record, our future can be measurably predicted, and we think with that clean cut information before us the actual earning power of the company is a pretty fair measure of its actual market value and it seems to us that the capitalization of the gross revenue should be given a very prominent vote in the ultimate consideration in assessing public utilities of the character which we possess. There are, of course, other factors; the back history of the company, its future prospects and the actual present value of the equipment which should be given due weight, but we feel that if there is any way to so arrange matters the Tax Commission should take into prominent consideration the capitalization of the net earnings in cases such as ours and it would go a long way towards putting us upon an equitable basis of taxation.

MR. WILSON: I wanted to add a little to Mr. Street's statement in this connection and give you very specific notice of what we would like to have the Commission do if your Commission will give me just a few minutes. Specifically, we would like to have the Commission

recommend to the legislature that the valuation for assessment purposes of all public utilities in the State be placed in the power and authority of the Tax Commission. Now our experience in that connection is something which we believe to be the strongest possible argument we could give the Commission for that recommendation.

The experience that we had, briefly, was this. The Water & Light Company had been assessed for two or three years about $210,000, round figures. The County Assessor raised us about $100,000 during the controversy between the city and the Water & Light Company as to municipal ownership. A joint Board of appraisers was appointed and the reproduction value of the plan was fixed by that Board at $460,000. When we came on appeal from the assessment of the County Assessor to the Tax Commission that Commission raised us to the amount of the joint appraisal, $460,000. We protested on the ground that the Commission couldn't use that as the sole basis without taking into consideration our net income and other factors which should be taken into consideration in making a fair valuation. The matter was threshed out and finally the Commission I think reduced our assessment to around $275,000.

Now the point is this. During the course of that controversy we had all our figures and all our data sent to the Wisconsin State Tax Commission because we understood they had an expert valuation engineer who valued all of the utility corporations of that character in Wisconsin for purposes of taxation. He came back, with all the data before him just exactly as we had given it to this Tax Commission here, with a valuation of $190,000 and some odd dollars, on a basis of capitalizing our net earnings at 7 percent—no, it was 8 percent or thereabouts. The fact is that the State Tax Commission there had exactly the same data before them that this Commission did here and it only goes to show the wide divergence of methods and application of principle. Now that Commission took into consideration four facts in the reports that we received from the expert valuation engineer there employed for the purpose by the State Tax Commission of that state. He said they considered capitalization of net earnings at about 8 percent on most utility corporations; that they took into consideration its past history, its future possibilities and its actual physical value. However, in most cases they gave more weight in their final results to the capitalization of net earnings than any other fact. At times, of course, it would be impossible to apply that rule, and it stands to reason that the discretion of the Tax Commission must be exercised in that connection almost entirely as to what its final results will be in order to arrive at a fair market value.

This dissertation on the Wisconsin Tax Commission result is simply to show you that if we are going to get uniform results in this State we must have uniform administration of the application of these principles.

Now in time I believe that the State Tax Commission here would come to a definite basis, varying it, of course, in different cases as the conditions required, where they would apply practically the same principles, nearly, to all of the utility corporations in the State. As it stands now there isn't a single assessor in the state who undertakes, or thinks of applying any principles whatever to get his results. He

simply guesses, or he accepts the return of the utility corporation. In our case it was admitted by the assessor that he had guessed, practically admitted he didn't know anything about it. In other words, no assessor in the state is qualified to make a valuation of that character, because they don't know anything about the character of the property, they don't know anything about the principles applied elsewhere, so if we don't get a uniform administration of the law through one body you have just as many different methods, or different cases, as there are assessors in the State because in nearly every county there is at least one utility corporation which has to undergo an assessment from the county assessor.

Now in principle that is wrong, as the Commission will readily understand. It shouldn't be that way. It isn't fair to the utility corporation, it isn't fair to the other taxpayers. Our idea is that if the Commission would recommend to the legislature a law placing the valuation of those companies in the authority of the State Tax Commission you will have a fairly uniform administration of methods and fairly just valuation, which will be equal throughout the State. As it is now you haven't that condition, and can't have it. It is an impossibiity.

I might state, in that connection, that the almost uniform practice among the states where they have a Tax Commission is to place the valuation of all properties in the State Tax Commission, then the Commission certifies down to the county assessor its valuation and it is spread upon the rolls. Now we have thought that is an up-to-date practice, and it is in line with the practice pursued by those states that have made the most progress in tax matters, and we would be awfully glad if our experience has been of any aid to the Commission in connection with its recommendation, if the Commission can see fit to make it.

MR. HAGERMAN: One of the questions for which this Commission must find an answer is what shall be done with regard to an income tax for the state. In fact the immediate occasion for the appointment of the Commission was the desire of the Legisature to secure advice on this question.

We have on the statute book today an income tax law, which, in the opinion of many persons, is unconstitutional. So wide-spread is the opinion that the measure will not stand the test in the courts, that almost no one has considered it necessary to comply with its provisions. It is apparent from the testimony of those who have appeared before us that the greatest difference of opinion exists on the following points:

1st. As regards the wisdom of establishing an income tax at all.

2nd. As to the possibility of establishing such a tax in a form which would not be in conflict with the constitution of the state.

3rd. As to the details of the scope and character of such a law.

Knowing that Mr. Hawkins has studied these matters closely and that he has intimate knowledge of the history of the development of the present situation, the Commission would be grateful for any information or any opinions he may be willing to lay before it bearing upon the problem.

MR. HAWKINS: Mr. Chairman, I have given considerable attention to the study of this feature of your law but unfortunately for

regular and orderly presentment, I have not made a brief such as a lawyer loves to speak from, but have contented myself simply with making a memorandum and notes of the questions that arose as I considered the main proposition.

We are met at the very threshold of the proposition, so far as a progressive income tax is concerned, with our constitutional history on that subject in 1911 or '12, to be found in Article VIII under the heading of "Taxation and Revenue." The second provision of this article when first adopted, gave direct authority to levy a graduated income tax in the following language:

> "The legislature shall have power to provide for the levy and collection of licenses, franchises, excises, income, collateral and direct inheritance, legacy and succession taxes, also graduated income taxes, graduated collateral and direct inheritance taxes, graduated legacy and succession taxes, and other specific taxes, including a tax upon the production and output of mines, and oil lands, but no double taxation shall be permitted."

A very sweeping, broad provision. If we had allowed that to remain in our constitution this question would not be here. It wouldn't be a question. We had the authority to adopt a graduated income tax under that provision and the only question would be how far, in doing it, we violated the provisions of the Constitution of the United States in any particular statute which we enacted. As far as our own state is concerned it would have been constitutional. But later on, only four or five years ago, we changed that and swept it out of existence and substituted for it a single clause, to be found in the present Article VIII, Taxation and Revenue, reading as follows:

> "Section 1. Taxes levied upon tangible property shall be in proportion to the value thereof, and taxes shall be equal and uniform upon subjects of taxation of the same class."

Now we are met right at the start with the question as to whether an income is tangible property. If so, any tax upon it must be in proportion to the value of the same. If real estate was taxed by a graded tax law so that the first thousand dollars of its value should bear one rate of taxation, the second thousand dollars a higher rate, the third thousand dollars a still higher one, and so on, in other words, an act undertaking to divide it into classes according to its value, such an act would, under our present constitutional provision just referred to, be invalid. Nobody has ever supposed, in this state, that you had a right to tax real estate under a graded tax scheme. Everybody would have said at once, if such had been proposed, that it was an unconstitutional tax. They would have said that a tax violated the requirement that the same must always be in proportion to value, and, also the subsequent requirement that "the taxes shall be equal and uniform upon subjects of taxation of the same class."

Under those provisions, to my mind, it becomes impossible for a progressive income tax to be levied and collected. The first thousand dollars of one's income is no more valuable than the second thousand dollars. They are both, respectively, of one thousand dollars in valuation, and that is all.

The legislature has peculiarly the right to tax. If the constitution of this state said nothing whatever about taxes, it is, under legal principles and decisions, peculiarly the right of a legisative body to select the subject matters of taxation. And if there is no constitutional provision to the contrary, taxes may be levied for the support of your state upon any class of property that the legislature desires because, unless restrained by constitutional provisions, it is peculiarly, under the rules of common law and all cvilized governments erected thereunder, the right of the people to say what they will tax and what they will leave untaxed. As society builds up, inequalities of various kinds in taxation would otherwise occur, and so constitutional restrictions are brought in to govern the legislature in order to prevent the same, and to see that one class of people, by getting in a majority, don't impose upon any other. There is no principle that is generally in force today in practically all our states and considered more just and necessary than that the burden of taxation must be distributed equally and with uniformity, as near as may be. You never can get it entirely uniform. There will always be inequalities in the very best of tax laws, but industries and properties and civilization are generally such that as a rule those of the same class may be ascertained and thrown together more or less logically, and an approach made to something like a fair division of this burden through such classifications.

Some of the states have adopted constitutional provisions that all property must be taxed. Others have still left that proposition or that question, to be regulated by the people of the state under whatever law they from time to time adopt.

The first requirement of the provision which I have just read does not compel taxation upon all property. It says:

> "Taxes levied upon tangible property shall be in proportion to the value."

That is the only rule you have on that subject. That clause does not compel you to levy taxes on all tangible property. The second clause gives the right to select subjects of taxation, but under a rule that "taxes shall be equal and uniform upon subjects of taxation of the same class." The Legislature still has the right, as far as that constitutional provision is concerned ,of selecting what it will tax. If there is any law in this state which compels the taxation of all property, it arises from the exemption provisions of our constitution, which I will read to you in a moment and try to explain; but I don't want to take up much time with discussion of our constitutional provisions, other than those necessary to the subject matter.

What is a "class" of taxation? Taxation must be uniform, under this constitution, upon "all subjects of taxation of the same class." The former provision that we repealed provided distinctly that the legislature might select "classes" for taxation. The one adopted in lieu thereof seems to imply the same thing, "subjects of taxation of the same class," and your tax must be uniform. Now, then, under such provision, the Legislature selects general classes for taxation, as livestock, mines, real estate, personal property, and other specific kinds, and now we have got around to the proposition of taxing "incomes" as a class. That, therefore, is a new class that we are bringing in to which the same constitutional provision applies. Must taxes be uniform upon that class of taxable subject matter?

What is meant by "uniform?" The first thousand dollars is no more valuable than the second. The Legislature has undertaken, by the act which has been discussed before you and referred to as now being on the statute books, to tax incomes as a class and then, instead of leaving them as a class, to make five different classes out of them and therefore to say that the first thousand dollars, or the sole amount of your income, if yours amounts to only that, shall be taxed at a certain rate, but that mine, because it amounts to two thousand dollars, instead of only one, falls partly in a different class of property, and a different rate of taxation shall apply to each dollar's valuation in such new class.

The legal inference arising from the fact that the people of the state repealed the right of the Legislature to do this, is that they forbade it; that they didn't want it and wouldn't have it, and that they intended, directly by these short simple principles which are announced here substituted in lieu of the others, to prevent such an act.

I have heard it argued, or suggested publicly, by those in high authority, that at the time the Legislature proposed the adoption of such amendment to the people of the state, it was on the theory that this kind of an amendment would free the people of the state so that they could levy any kind of tax they wanted, without reference to any limitations whatever, and such provision would give them the right to enact a graded income tax. If that kind of an argument was made it couldn't have influenced anybody. It is very foolish and silly, it seems to me, to say that having in our constitution a direct provision giving us in simple straight language the right to levy a graded income tax, that we would repeal that in order to clothe ourselves with the right to levy a graded income tax. So it seems to me that we have arrived at the will of the people "right off the bat" on that proposition.

I understand that it has been contended before you that the State of Missouri has unheld a progressive income tax under constitutional provisions, similar to ours, and that it has even been suggested that we took over our own constitutional provisions in question from that state. I have not been able to find that any graded income tax law has ever even been adopted by the State of Missouri. I don't think it has any such tax law. If the case of Ludlow Saylor Wire Company vs. Woolbrick, decided by the Supreme Court of Missouri, 205 S. W. 204 is the basis for the contention I think the suggestion is very much in error. You probably didn't have the law of that state read to you. It isn't a graded income tax that court passed upon at all. That state, under its constitutional provision somewhat similar to ours in one or two particulars only, enacted a law that retail merchants, putting them in a class, should pay a certain income tax; that wholesale merchants, brokers and other businesses and enterprises should pay a certain other income tax; different rates, not a graded rate, but specifically named in each instance for each occupation; not a graded tax such as we are discussing at all; and the question before that court in that case was whether an income tax of even that kind would be legal under the uniformity and other clauses of their constitution; and the holding of the court was based on this principle; that while you can't take income and divide it up into classes with reference simply to amounts, (because the amounts have no relation to the subject matter) yet that you can divide up such various businesses, so far as income

is concerned, into legitimate and proper classifications. There are many reasons for such a holding. For instance, suppose you have an income arising from a saloon. A saloon is a recognized evil. The policy of the law is to put a heavy tax upon that, partly to take care of the cost, disturbance and lawlessness which it creates. There is more reason for taxing a business which is harmful to society and which causes society to take its other revenues to protect against the evils it creates, than there is to tax a business, beneficial to the community, and therefore the decision rested upon the doctrine that classification of subject matter on income may be properly made according to the character of business from which the income arises, and you can name in each instance one mill for this, five mills for that, etc. We can very readily see that there are a good many businesses you want to see carried forward, a great many of them that are very necessary to the people. Some are necessary to people in little communities, in isolated sections, as well as more necessary in other places. The margin of profit in one business may be very much smaller than that in others. Some other business you want to discourage, or are burdensome, as I say, and therefore there is a reasonable differentiation involved which justifies classification under an income tax of that character.

Under that law, however, Missouri holds that all taxes imposed upon one business of a certain character named must be, in order to come within the uniform clause, imposed upon all like businesses. The decision was not reached by a unanimous court but they got a majority only. The court in that case had fifteen or twenty propositions under discussion. They had an evenly divided court with reference to some of these very propositions which are necessary in order to uphold this decision, but one of the judges finally said, "very well, I will agree to the result, but I don't subscribe to decision ten," and so on, concerning this uniformity, "but I will agree with the result."

The act under which such decision was made doesn't appear in the majority opinion. You learn its true character only when you come to the dissenting opinion. Now let's hear what kind of a law that was. This is the dissenting opinion subscribed to by several of them, some of them subscribing to one doctrine and some subscribing to the other.

(Reading from Ludlow Saylor Wire Company vs. Woolbrink, Southwestern Reporter, 205, p. 207).

So that the act is purely and entirely a flat net income tax according to occupation. It is nowhere like a graded income tax. There isn't a single feature of it that is similar to a graded income tax act such as that New Mexico enacted.

Now when the dissenting Judge speaks in this decision he holds that the tenth section (the material one) is contrary to the constitution and there is not a majority of them that held against him on that contention. Three of them hold one way and three of them hold different ways, but you can't get a majority on the tenth proposition, except that one finally says "I will agree to the net result." The minority opinion calls attention to the fact that the constitutional provisions being discussed were drawn from the constitution of the State of Pennsylvania, and the Supreme Court of such state interpreted the same. One dissenting opinion "concurs fully in that portion of the

principle contended for in another dissenting opinion thereof which holds that a tax on incomes is a tax on property and that the income tax act violates sections 6 and 7 of Article 10 of the Constitution," so they were all mixed up on it. But one concurred in the result, though he had dissented along various lines; so they upheld their act, but when upheld, it is not a progressive income tax act at all.

Now here is the Pennsylvania decision, interpreting practically the same constitutional provision. This is a decision of the Supreme Court of Pennsylvania rendered in 1899. Before reading, I want to call attention to one line of difference between the decision of the courts with reference to a progressive inheritance tax law and a progressive income tax law. The decision is based on this; that constitutional provisions preventing progressive income tax laws, these provisions of uniformity of taxation upon property don't apply to inheritance tax laws because one has no property right to inherit his father's property. He has no right to start with, of any kind, but is granted such right and gets his right to inherit his father's property under the law, purely and simply; that the law gives him that right, and therefore can give it to him only under the condition that he pay the state such, or such part of that property as the state determines it will take. That distinction, not at first clearly perceived by many of the tax is put upon, and not property. It is his right to inherit that is taxed, and he can't take that property by inheritance without complying with the law.

That has been finally settled by the Supreme Court of the United States in numerous cases. I will be glad to give references to these decisions if you want to consult them. There is quite a lot of them. One of our greatest Supreme Court judges early dissented from that doctrine. He couldn't bring himself to believe that one hasn't a natural right, independent of the law, to inherit from his forbears. He argued that such was a property right and in his argument he said "it is not contended by any of the members concurring in the majority opinion that such a law, if it was a progressive law, would be valid under such provisions if it was upon income, but the majority seek to make the distinction that this is a tax upon the right and not upon the property." But the decision of the Supreme Court of the United States has become the generally accepted doctrine upon that subject and many other states have upheld or several of them at least, a graded inheritance tax as not being forbidden by such constitutional provisions. In some of the states, however, the courts have held that their statute conferred the inheritance as a right of property and that the provision of uniformity forbade any graded tax or fee because the same rested upon the property and not upon the right, because it was property. One of the numerous decisions, which is not very long, if you will permit me, I will read. It is the Pennsylvania decision I referred to a moment ago.

Now it is a rule of law that whenever one state adopts a statute or a constitutional provision which originated in another state and which had passed to its Supreme Court for interpretation, that the state subsequently adopting it adopted also such interpretation with it because it had been determined authoritatively what such act meant. That is the almost invariable rule where the language is identical, or so identical that the two mean the same thing, and the origin of the adopted law can be traced. In the dissenting opinion in the Missouri

case in which it was stated here the other day we had adopted the Missouri Constitution on this subject and therefore were bound by the doctrine of that state, as announced in the case I read, but in that very case it is said that that state had taken such provisions from the constitution of Pennsylvania.

In the case of in re Cope's estate (Pennsylvania) rendered November 24, 1897, reported in 43 Atl. 79 it was held that the provision of the constitution of that state that "all taxes shall be uniform upon the same class of subjects" was violated by a graded tax in which classification was dependent alone upon amount. Quotations from the opinion in that case are as follows: "A pretended classification, that is based solely on a difference in quantity of precisely the same kind of property, is necessarily unjust, arbitrary and illegal;" and again: "If the legislature had authority under the constitution to do what was done in this case, they had like authority to reverse their order of taxation, etc., and thus impose the tax on personal property amounting in value to $5,000 and less and exempt therefrom all property of the same recognized class in excess of that sum; and, consequently, they have like authority in every case to establish any other arbitrary ratios between the amount in value of property to be taxed and that which shall be exempt therefrom in any class of subjects."

Now in Mexico they have reaped a great revolution partly because they did that very thing. They put a tax on the poor people with small incomes and upon the small property owners, and exempted the rich. If you can put a tax on the rich and exempt the poor, it is just a question as to whether the rich control the legislature and are mendacious enough to put through a law reversing it and putting it on the poor and the constitution intends to stand over us and see that neither one shall be possible. The Court shows very clearly in this Pennsylvania case where we are going to when we undertake it.

(Further reading from above opinion.)

I want to say there is not a decision in any State that I know of upholding a graded income tax law except where the same are especially provided for in the Constitution of such state, and very few constitutions so provide. We hear of income tax laws being enacted throughout the various states, but invariably we find, when we run them down, that they do not provide for graded taxes, but for flat uniform taxes, perhaps incorporating exemptions in some of them of small amounts.

Now the case of In re Switzler, in the State of Missouri, 45 S. W. 245, is another inheritance tax law in which they discuss this same proposition. Take the case of State vs. Switzler, Supreme Court of Missouri, 1898. This is the same State, from which the case was read a little while ago, passing upon an income tax law, which I undertook to show you is not a graded income tax at all. This is an inheritance tax case in which the court undertakes to show some of these same principles. I have searched everything I can find and outside of states that have a constitutional provision directly providing for a graded tax law, I can't find a single case arising under a uniform provision where the legislature undertook to put in such a law.

(Further reading from above case.)

I made a mistake a minute ago in saying this was an inheritance

tax proposition. The court held that it wasn't an inheritance tax proposition; that it wasn't on the right, it was upon the property.

(Further reading.)

(45 S. W., p. 245, State vs. Switzler.)

MR. HAIG: The court there, I didn't notice that it referred at all to the presence in the law of a section such as was present in the case of the Pennsylvania decision. Am I right in that?

A. There is an old section here.

Q. Did that depend upon that?

A. They drew a distinction between a tax upon the right of inheritance and a tax upon the property of the testator and held that in this case under the law, it was not a tax upon the right but was a tax upon the property of the testator and therefore it had to be uniform in the amounts it required each heir to contribute to receive the portion that was left him because it was such property tax.

Q. But the presence of the old section was an element in the Missouri case, as it had been in the Pennsylvania. How about this state?

A. New Mexico has an inheritance tax law.

Q. But I mean has it an old section similar to that in force in Pennsylvania and Missouri?

A. I don't know what the language of our inheritance tax law is, whether it places a tax on the property or the right of the person to inherit.

Now I have a great many decisions of various courts along these lines. I have some decisions from the Supreme Court of the United States upholding the right to tax an inheritance where it is a tax upon the right of inheritance, instead of being upon the property inherited, by whatever rule the State adopts, after saying that that rule, when adopted by the State, must not make classifications which are purely arbitrary. There must be some natural reason for the classification or that court holds it is simply an arbitrary classification intended to work out a discrimination contrary to the principles of the Constitution of the United States. The uniformity clause of the Constitution of the United States refers to territorial uniformity; it doesn't apply to uniformity of subject matter For instance, it says that all direct taxes must be levied uniformly in each of the States, and provided for the taking of a census of each state when you levied a direct tax. When the Congress of the United States levied a direct tax under that constitutional provision and proportioned the amount which each state had to raise according to its population, that that was the class of uniformity which their Constitution referred to, geographical uniformity, and that such provisions have nothing to do with the character of uniformity as to subject matter of taxation that the states have adopted. They further hold, however, that under the Constitution of the United States each person must be allowed by each state equality of right and that no man's property may be taken from him without due process of law, and that those two provisions gave that Government the right, when a state shall adopt a law which is not uniform

upon the various classes subject to taxation, to extend its aid; in other words, that such a law violates the Constitution of the United States. They say that such classifications much be based upon some reason and cannot be arbitrary, merely; that an arbitrary classification, not based on reasonable distinguishing ground, violates the provision that the States shall afford equal protection, because it has not afforded equal protection, in that it takes from one man with property of a certain class a greater tax than it takes from another man with property of the same class, of the same value.

Now, then, that comes back so that both our provisions and the Constitution of the United States, in my opinion, absolutely forbid that you tax on a thousand dollars, because it is my second thousand dollars of income, being exactly similar to your one thousand at two percent, while your one thousand is taxed at one percent. In other words, the classification is purely arbitrary. Both my first and my second thousand and your first thousand are of the same value and if you go to assigning any reason for such character of taxation, you invariably run into principles of ethics, instead of government principles. One man says, "I am a poor man and ought to be protected." That is an ethical question and not a governmental question. That has its seat in religion and in those theories which are all right enough when properly applied, but it finds no support under constitutional principles of this kind and is the taking of your property from you for some other man's ethical thought and not for a purely governmental thought. Now that seems to be, whenever we get away from these principles of law which are necessary in order to keep people at work, it seems to be what they run into. I am not prepared to discuss that.

MR. HAIG: Nevertheless, in the presence of these Federal Constitutional provisions with regard to uniformity and due process, the United States Supreme Court has upheld, has it not, some progressive income taxes and progressive inheritance taxes, both under the National law?

MR. HAWKINS: It has upheld a progressive income tax purely on the basis of war emergency. We never had a progressive income tax until we got into this emergency, we had a flat two percent income tax upon all persons, exempting amounts below $2,000, I believe, or $4,000.

MR. HAIG: I think you will find United States law of 1913 is a progressive law on individuals, not on corporations.

MR. HAWKINS: However that may be, these prohibitions of the Constitution are not against the United States, but are that "no state" shall do so and so. It is one of the forbidden things to the States, not to the United States. For instance, the Constitution of the United States don't forbid the United States from depriving a person of his property without due process of law. That is a prohibition that goes against the States only. There is no law of Congress of the National Government forbidding a graded income tax.

MR. HAIG: The Act of '13 was a progressive act and moreover the Wisconsin Act has also not been thrown out when carried to the United States courts. Do those general provisions in the Federal Constitution which do safeguard property from being taken without due process, interfere with the Constitution as it is in that State?

MR. HAWKINS: Absolutely. They are cited all the time and taken up wherever the state law is violated.

MR. HAIG: I mean particularly the income tax situation, in view of the fact they have taken the position that progressive rates both in the case of inheritance tax and income tax are not on general ground fixed contrary to the principles which obtain?

MR. HAWKINS: No. They have not held that laws of that kind can be enacted wherever you have a constitutional provision which is violated, or wherever the constitutional prohibition against the states is violated. They have always held that if the constitutional provision of the state was violated and you had a right to go into the United States Court, which you might by diversity of citizenship or some other reason, they would follow the decisions of the state courts of last resort in any interpretation as to the meaning of state legislation or state constitutional provisions. There is one case in particular which I will endeavor to find and give to you where the Supreme Court of the United States brings up that question and shows that notwithstanding such practice, the Federal courts must, under the Constitution of the United States, decide such questions for themselves and not accept state decisions, if the question be whether the laws of the United States are offended by state laws; they are not disposed to interfere with the laws of the State; and wherever a state has seen fit in its policy to make a classification which can be justified as not being arbitrary, they will accept the legislative decision of that state as to the meaning of the act and as to the policy, and not question it; but that where clearly in tax laws, for instance, where there was no basis for classification made they have held that they must be governed by their own interpretation as to whether the same violates the Constitution of the United States.

Now I want to go just a little further. I want to invite you to section 2 of Article 8 of our Constitution:

> "Taxes levied upon real or personal property for state revenue shall not exceed 4 mills annually on each dollar of the assessed valuation thereof, except for the support of the educational, penal and charitable institutions of the state, payment of the state debt and interest thereon, and the total annual tax levied upon such property for all state purposes, exclusive of raising levies for the state debt, shall not exceed 10 mills."

You violate that provision with the first grade of this income tax law which you have on the statute books, provided income is either real or personal property, tangible or intangible. What about other state taxes? The levies are already up to the limit as provided in such section. No greater levies can be made under this section upon income unless income is arising from property in kind or in money, not "property." You can't get away from it being such. It is not a thought. We wouldn't like to wake up from the knowledge that you had a thousand dollars in the bank to be told by our banker that it was simply a thought and not a reality. It must be property and not a mere mental consideration. If you have already spent it at the end of the year, that doesn't make any difference. You had control of it, you exchanged it for something of value which was property. It was in existence. You may not have required your creditor to pay you the

money; there is no property in money other than what money represents, and yet money is clearly property.

MR. HAGERMAN: If income were intangible would the interpretation be any different?

MR. HAWKINS: Not a particle, because personality may be intangible. If you have got a promissory note by which a man owes you a certain amount of money you speak of it sometimes in terms as intangible property, but it is property and it is either real or personal.

MR. HAIG: I wonder how those Missouri decisions you read fit in with our constitutional provisions as we are. The Missouri Constitution, Section 4, Article X, means, I presume, a prescribed income rate upon all property subject to tax.

MR. HAWKINS: They allow them to make,—they make certain property subject to taxation and exempt certain classes of property.

MR. HAIG: Then in Section 3 it says "taxes shall be levied and collected for public purposes only they will be uniform upon the same class of subjects within the territorial limits of the authority levying the tax" and so on. Now the question arises as to whether income is property. If it is property under the Missouri Constitution, it would have to be taxed at the same rate as other property.

MR. HAWKINS: Of the same class.

MR. HAIG: No, I don't see it that way. Section 4 says "all property subject to taxation."

MR. HAWKINS: That is exactly what this case from Missouri settled. It says "property of the same class," incomes of the same class.

MR. HAIG: I was wondering if there was any distinction between property and other subjects of taxation, or is it between different kinds of property.

MR. HAWKINS: There are two distinctions. There are, for instance, under our law, you notice here, a very peculiar provision,—

MR. HAIG: It seems to me those constitutional provisions are not parallel.

MR. HAWKINS: Yes they are. In some parts they are practically parallel. "Taxes levied upon tangible property shall be in proportion to the value thereof." What is tangible property? What would you say was tangible property? Would you say a debt owing to a person was tangible property? Now if you say it is not, then there is no constitutional provision of New Mexico which prohibits the legislature from levying a greater tax on a thousand dollars, for which you have a promissory note to pay, than there is on a thousand dollar horse.

MR. HAIG: Well, I don't suppose that provision was drawn with that particularly in mind; that some people wanted to have a lighter tax upon some intangible property than upon tangible property.

MR. HAWKINS: Do you believe the Constitution of this State intended to allow you to put a greater burden upon a horse?

MR. HAIG: It is done in half a dozen states.

MR. HAWKINS: Hold on a minute. To put a greater burden upon a promissory note given in purchase of the horse than they would for the horse itself as against the promissory owner?

MR. HAIG: Yes.

MR. HAWKINS: I don't think so. I think that violates every idea and thought of uniformity, to put one man who owns a piece of property worth a thousand dollars under greater burden to support the country, when he could only exchange it for a thousand dollars, than it did to put it on the thousand dollars the other fellow gave him in exchange for it. That would absolutely put one class at the mercy of the other. "Tangible property" and "intangible property" clause means this; that it divides the subjects of taxation into two great classes of property; real and personal. Those are the great classes of property. Now the state grants to many men in this state a license to carry on a business. It may be granted with reference to what is made therein, or it may be granted without any reference to the same. Such a right is neither tangible or intangible property; it is a legal right, like an inheritance, which can be taxed ,and when you undertake to say "tangible property" shall be taxed at a uniform rate, you necessarily mean to say such rights are not included for this reason; it ought to remain within the right of every state to say what it shall exact from those who acquire rights under the state.

I have some decisions, if you wish to see them, in which the question as to what is "tangible" and "intangible" has arisen. Bouvier defines "tangible," within the meaning of tax laws, as that "which is definitely ascertained and determined." I have a decision from the United States court where the law of the state required the taxation of tangible property. An express company was assessed under such a law on all of its rights, choses in action, debts, amounts due it and everything of that kind. It brought up the question and contended there was no authority under the law for taxing such property. The Court goes into the definition of tangible and intangible with reference to the tax laws and applies there this Bouvier meaning and upholds the doctrine that the State has a right to tax such corporation on all amounts of money owing to it under that wording of "tangible" property.

Before passing on, I want to bring up New Mexico's present income tax law. I am a little bit confused whether it is in the present law or whether it was in the proposed act that Governor Larrazolo tried to have the Legislature enact at the last session of the Legislature, but it is in one of the two, I think perhaps it may be in the latter, but for fear it may be in the first I will mention it now. It provides that the tax shall be levied for educational purposes. It is so provided in order to get around this 4 percent limitation. Then its author realized that the law, if enforced, and constitutional, might provide far more revenues than necessary for the purpose for which levied, and that there would be a surplus on hand which had been derived ostensibly for educational purposes, and it directed that any surplus on hand should be converted over to the state indebtedness fund. In other words, it proceeded to take away from you your constitutional limitation of four mills for state purposes by evading the provision that way. That couldn't be done. The courts would nullify it instantly. You couldn't levy a tax any greater than was necessary for educational purposes under your 10 mill proposition and then take that and turn

it over to a purpose for which you were forbidden to levy more than four mills.

MR. ASPLUND: Supposing the proceeds of the income tax were distributed to the counties through the common schools?

MR. HAWKINS: It wouldn't do, sir. This provision stands as a guarantee to every taxpayer that he shall not have his money taken from him by the State in greater percentages except for this purpose and the mere fact that you turned it back and gave it over for some other purpose wouldn't have accomplished that result. If you levied it for educational purposes and that was apparent, that would be all right. You mean if you take it and give it for educational purposes in the county?

MR. ASPLUND: Yes.

MR. HAWKINS: I don't know how that would thresh out. I took the law just as it was in looking at its constitutionality or unconstitutionality and I mention this now because the same features may be proposed to you as going into another law. They can't do it.

Now, then, we go down to exemptions, and I want to call your attention to two different classes of exemptions. There is a rule of law for the construction of a statute which is, I think, being tortured here, with reference to exemptions. Listen to this: Section 3, Article 8:

> "The property of the United States, the State and all counties, towns, cities and school districts and other municipal corporations, public libraries, community ditches and all laterals thereof, all church property, all property used for educational or charitable purposes, all cemeteries not used or held for private or corporate profit, and all bonds of the State of New Mexico and counties, municipalities and districts thereof, shall be exempt from taxation."

I have heard it argued that that impliedly prohibits the Legislature from exempting anything else from taxation. I don't think so. The statement of the rule that, when a legislative body is given the right to exempt certain properties, there is an implied prohibition that it shan't exempt anything else, is quite correct. But that is not this provision. This is a direction to the Legislature having, if the statute was silent, the power to tax and not to tax anything it wanted to, subject to the Constitution of the United States. It says to the Legislature, "you shall not tax such and such." "We don't interfere with your right to tax anything else by this prohibition but you shall not tax those things." It isn't a grant of a right to the Legislature to exempt from taxation certain things; but is a direction that you shall not tax them. "You can tax or exempt anything else you want to, but not that. You shan't do that." So there is nothing in the construction of that constiutional provision which negatively prohibits the Legislature from making any exemptions it chooses to make, and the right to select subject matters of taxation is uninterfered with by any other provision of the Constitution. The Legislature can select a subject, but it can leave unselected any subject it pleases.

What about Section 5, Article VIII: "The legislature may exempt from taxation property of each head of a family to the amount of $200?" There is an implied prohibition. If it had said "the Legislature may exempt property to the amount of $200," it would have

clearly been an implied prohibition against the Legislature exempting anything else; but when it selected out the head of a family and specifies with reference to him, then it seems to me it is a very serious question under our law, as it stands today, if the Legislature can not exempt anything it wants to, any class it wants to, other than to exempt more than $200 in property value to the head of a family. I disagreed here, some two or three years ago, when I heard that the Attorney General of the State had given to the Tax Commission an opinion that the mine tax law, because it exempted, practically, in its operation contiguous territory, was void. I said "what is to hinder the Legislature, under these provisions of the Constitution from exempting anything it wants to, provided it does not exempt more than $200 to the head of a family?" I do not seek to convince that that is correct; I merely suggest that thought for such consideration as you choose.

These are provisions which, if my fear is correct, ought to be amended, because the power ought not to reside in the Legislature in this day and time under the stress and strain that we are under, to make exemptions, except those which are very clearly allowed in our Constitution. Gentlemen, that finishes what I desire to say about income taxation.

There is one other provision of law, if you will pardon me, which I would like to refer to. I want to call your attention to the railroad tax law in this,—not as to its inequalities, not as to its enforcement or the amount of taxes: The practice today of the Tax Commission of New Mexico is to assess the railroads on a track or mileage valuation throughout the state and then to divide that valuation to the respective counties according to a mileage basis without reference to the question at all as to values lying in each county. There is no law for it. It results in the grossest inequalities. It gives to any community in this state the right to mandamus the State Tax Commission if it wants to, and say to them "You put the valuation that is in that railroad in my county, because your Constitution requires that these values shall be credited to the counties in which they are situated." It does not make any difference to the railroad, it is a fair practice so far as they are concerned, for they do not care whether they pay it into one county or the other. In one county they might happen to have an excess valuation and a low rate, but in the long run it would probably even up so far as the companies are concerned. You have terminals in one county, structures of large value. One railroad may run for miles through a plains country where the value is all the same and it would not make any difference to them how you distributed it; then it may run into a county where it costs $150,000 to excavate one mile. The Interstate Commerce Commission is now valuing these railroads and it is valuing them mile by mile and locating these values.

Now what would happen if the State Tax Commission goes ahead with the usual valuation of these railroads and the railroad did not want to pay this tax. It could not be collected under such an assessment. Such a case has arisen in the State of Tennessee under an almost identical railroad assessment act to ours, and such practice held illegal and taxes levied thereunder void. I mention that, not that any injustice has been done,—I think the way they do it is perfectly fair, but it is within the power of any railroad to defeat the entire assessment today when made in such manner and in your consideration of

the subject I take it you want to have your attention called to things of that kind.

MR. HAIG: What would you suggest should be done?

MR. HAWKINS: I think there ought to be a law regulating the present practice. I think it is fair but I think it ought to be looked into to see if it works any inequalities.

MR. HAIG: Would it require a constitutional change at all?

MR. HAWKINS: I am not sure about that, but there is one thing about it, our statute does not authorize it.

MR. HAGERMAN: Do you think the tax limit laws to which you have made reference would prevent the passage, without constitutional amendment of a flat income tax?

MR. HAWKINS: No, sir, I do not think it would. I do think, however, that in passing an income tax law you have to be careful not to make a double tax. If you put a tax upon property, for instance, in a city, that has no value other than a rental value, and then you put an income tax on the amount of rent which the owner gets out of it, you have got a double taxation. You must, in my opinion, to make a valid income tax, not tax property which provides the income and then tax the income too. That is discussed by the Supreme Court of the United States in the Pollock case, where they hold the only thing property is fit for is an income, except residence properties, and that revenues which arise out of property devoted to business, arise out of the business itself. That if you put a tax on the property and then tax the income coming out of the property, that you have unquestionably a double taxation. The question arose where they sought to enjoin the direct tax upon bonds and stocks in New York by the United States. It is a very thorough and complete decision. We had two decisions, you wll remember. They got all of the law in there and from it, as I see it, they established this principle: That income is property; that income coming out of property represents the only value which the property has; that if you tax the property and then tax the income, you hit the owner twice and your burden has become unequal. A good many of the states have followed this kind of a plan: That wherever the property producing an income is taxed the income itself from that property is not taxed, but they require them to show the source of their incomes.

MR. HAIG: Can you cite a case of a state that does that?

MR. HAWKINS: I can cite a case of a good many discussions on it, yes. Wherever income arises from property or capital or professions not taxed, it undoubtedly ought to be taxed, but you have got to tax it at a flat rate unless you go through on the Missouri theory of dividing it up on the businesses from which it comes and making a separate classification, which is not arbitrary. On money alone, classifications are undoubtedly arbitrary. There is no difference between one thousand dollars and another thousand dollars.

There is another thing I want to mention to you. We are going to have a very serious situation about railroads. Under the present law, the railroad stocks of this county have largely, I think, been confiscated. The Government of the United States has said after the

first day of September the carriers may pay their operating expenses out of the earnings, and retain five percent of the valuation of the carrier's operating property for the payment of interest and dividends; but that the first one-half of one percent that you make over five percent must go into a reserve fund. It cannot be distributed to the stockholders. After that, the Government takes the first one-half of one percent and puts it into a reserve fund to loan the railroads for future additions and extensions. Very few railroads in this country make six percent, or more than six percent, on their property. They have borrowed money, not on their property, but on their earning capacity. This act also provided that the Interstate Commerce Commission shall assess rates estimated by them to earn six percent, not on their earning capacity, but on the physical value of their property. The Interstate Commerce Commission has, within the last sixty days valued the El Paso and Southwestern System at several millions less than such Company has heretofore been paying taxes to the State of New Mexico on. Other railroad companies are going to have their tax values shrunk the same way. Th State of New Mexico can't tax any of the income of the United States coming from earnings on operation, and we are going into a new aspect of railroad taxation which is going to require good, sensible thought and laws. Now whether you can put an income tax upon the earnings of a carrier under the new Act of Congress with reference to carrier's tax may be a serious question. You have already taxed its physical properties, now you tax its income too, that is double taxation, is it not? Not only that, but it is taxation of the United States insofar as it diminishes the earnings the Government would otherwise receive from such sources. How are you going to meet a shrinking of value in the taxation of the railroads?

MR. HAGERMAN: If railroads are now taxed at $100,000,000, if they were all depreciated to the extent yours have been what would be the effect?

MR. HAWKINS: I haven't cast it up in my mind. I tell you what they do. They estimate the reproduction value of the railroad up to 1914. They don't give you any of these increased prices, but they pause at 1914 and they say they are going to leave the question from there on to the present time for consideration, and perhaps if they have got to give you an increased value as to what it would cost you to reproduce at the present time they will use a multiple on that.

MR. HAYDON: You spoke of the matter of exemptions under the constitution there. There is another exemption which you did not mention, not intentionally, I am sure. That is the exemption of $2,000 to soldiers.

MR. HAWKINS: I think it is void, absolutely under our constitution, unless the Legislature has the right to exempt anything it pleases except more than $200 to the head of a family. If it has that right, the exemption to the soldiers is good.

MR. SPRINGER: You mean that the soldier is the head of a family and they couldn't exempt more than that to him because he is the head of a family?

MR. HAWKINS: I hadn't thought of that, but I think the exemption to a soldier as such is void under this Constitution unless the Legislature can make any exemptions it pleases. If it can make any exemptions it pleases, we ought to change that by amendment.

MR. HAYDON: As I understand you, in the income tax law we would have no right to pass a graduated income tax without an amendment of the constitution?

MR. HAWKINS: I don't think we can, sir.

MR. HAYDON: And if we passed an income tax and assessed a flat rate, then that rate must not apply, that tax must not apply to properties assessed under the general tax law?

MR. HAWKINS: I don't say that, sir, as an absolute rule arising under our Constitution, but I say that that is pointed out by the Supreme Court of the United States in the Pollock case as being a double taxation, in which they bring up the question as to what is property anyhow. Property is nothing but the benefit arising from it, and they reduce it to that.

MR. HAYDON: If we would have a consitutional amendment or change back to the old provision we would then be on a safe basis in passing on income tax law?

MR. HAWKINS: You could put on a progressive income tax but I don't think you could double. You couldn't put on a physical valuation into tax of a property for instance that produces a thousand dollars income devoted to business purposes and then put another tax on the income, because I think that would be putting a double tax, unless you also assess in a way to equal that burden an income whch did not arise out of property but which would be heavier than the income which did arise out of the property, because it would be making that man who owned that property and who is building up our state pay a greater burden than a man who was simply making money out of our people and pocketing his income. It would be bad policy and absolutely destructive.

There are other features to our law in this state affecting taxation that ought to be brought up. There is one great feature, I think Governor Larrazolo has a policy of having the United States lands deeded to this state. What for? The argument is that if our lands are deeded to us that we can build up our state and will do it. Let's see how that works out. Here is a man in the State of New Mexico that owns a hundred thousand acres of patented land under a land grant. His land is worth $3.00 an acre. He has probably got that invested in it, or more. He seeks to build up his state and to make a profit on his land; and our state grows from the men who have patented lands, or land grants, and grows from the owners who improve their lands. The man who has his titled land, whether his homestead or grant, has at least $3.00 an acre invested in it. His interest charges on that are equal to 18c an acre per annum. It takes 40 acres, if he has a large tract, to grow a cow; he therefore pays 40 times 18c for his right to grow a cow. In addition to that he pays his taxes on the cow. The State of New Mexico, while claiming that if it had the public lands given to it, could build up the state, has found it impossible to sell its land. It says to the man who has his money invested in cattle and is the owner of his land, "I will lease public lands to be used in competition with you. I will let lessees have such at 5c an acre and will enable them to raise a cow for $2.00 that you have to pay $7.00 or $8.00 interest charge to raise." That will break down the man of property, who is building up your state. I want to see every

cattle man have a chance, but let's don't give them their chance with the state's lands at the expense of the other fellows who are in the same business. Let's put them on equality in some way. If you are going to relieve your own state lands from taxation for grazing purposes, then I think you better relieve the lands of the other fellow, if you can do it under your Constitution, and make them equal.

There has been great contention as to whether you could tax leased lands. Beyond all peradventure you can, if not one way, another. In the first place a leasehold interest is a property interest; it is a landed interest, and all landed interests are taxable. You can require the man who has a state lease to pay the same taxes as is paid by other owners, or you can say to him, "we will not charge you any taxes, we own this land, we will not assess it or sell it for taxes, but we will put the taxes on there just the same and we will direct the State Land Commissioner when you pay your annual lease that you shall also pay in a certain amount which shall be used for taxation purposes and shall go to the schools." You can't take the lease money arising from these leases and put it into taxation purposes because the National Act of Congress forbids it. You must give over that money arising from those leases to the particular institution for which such lands were selected, but you can say your lease is upon condition that in addition to lease rental, the lessee must pay to the state for the purpose of policing, protection of law and order, and other state purposes, a certain amount, you can calculate and make equal to taxes.

MR. HAYDON: If you taxed those leases would you have to tax the leases of anyone else on private lands?

MR. HAWKINS: I think so. I think all leasehold interests would have to be taxed.

MR. HAYDON: Who would be taxed, the lessee or the lessor?

MR. HAWKINS: I would put the tax on the lessee. He is the owner of it. We have got to encourage the cattlemen, unquestionably, and the sheep men, but we shouldn't drive one of them out of business by state ownership by favoring the other fellow. Now there is another thing. Some time since here we went in and passed through a law in the legslature authorizing every man who had purchased land from the state to change that contract into a contract by which he didn't have to pay or make any annual payments, but he might defer his whole payment for thirty years by paying the interest on it annually, and in such event he also had to pay taxes, however, on the same equity that he would have paid if he had gone ahead making his payments. When he makes his payments he pays on his equity. Now, after having sold a lot of land in this state and got it into private ownership where men would endeavor to develop it, we actually turned around and released them, gave them the right to take it and hold it for thirty years and then they can surrender it at the end of thirty years without paying for it, and get their promissory notes and obligations cancelled. We not only turned around then to abandon the sale of real estate in the state calculated to help build up our state, but actually put a premium on this other kind of thing. The law is void because the Act of Congress providing the sale of these lands provides that the contract that is made at the time of the purchase thereof shall not be changed thereafter and yet we went on ahead absolutely regardless of the whole thing.

MR. HAGERMAN: Is there anything you would care to add to what has already been said in connection with the discussion on the income tax, Mr. Springer?

MR. SPRINGER: Only this. Of course I have heard the same argument from Mr. Hawkins before, and the reading of most of the authorities he mentioned, and there is just one thing I would say. We considered that the decision of the Supreme Court of Missouri was to the effect that the income tax was not a tax upon property. I know Mr. Hawkins had decisions of the Supreme Court of the United States which he contended upset that theory entirely, and I just want to say that was the principal, or one of the principal reasons that several attorneys who were asked by the Governor to consider the matter and prepare that bill concluded that the legislature of this state could, without violating the constitution, pass a law levying a progressive income tax, considering that it was not a tax upon property, but a tax upon persons, and could classify those persons in relation to the amount of income they were permitted to receive as residents of the state and doing business in the state as to nonresidents. I don't care to go into a discussion of the matter, this is just a statement of the reasons that some of us had for concluding that the legislature could pass that kind of a progressive income tax and if, as I say, it is not a tax upon property and not a property tax, then I believe most of the arguments of Mr. Hawkins would not be applicable.

MR. HAYDON: Your construction, Mr. Hawkins, is that income is,—

MR. HAWKINS: Property.

MR. HAIG: How do you reconcile that conclusion in connection with the various Supreme Court decisions? Take, for instance, the Macomber case, decided only a few months ago where it was declared stock interests are property and not dividends and the United States has no power to determine it is income and not property.

MR. HAWKINS: There is only one constitutional provision in the United States Constitution with reference to the taxing of income or property and that is that no direct tax shall be laid by the United Sates, except uniformly upon the states. That an income was necessarily a direct tax because it arose,—

MR. HAIG: But the sixteenth amendment exempts only income tax, it doesn't affect that portion of the clause except as to income.

MR. HAWKINS: The U. S. Supreme Court held that the tax in question in case referred to was necessarily a direct tax because it arose directly out of specific property and that therefore it must be a direct tax. Now, then, that was in the first decision. In the first hearing they did not go so extensively into the question as to whether income was property, but in the rehearing they took it up and held that income is property and held that such tax was void because it was not levied upon each state in accordance with the population. Then we amended the Constitution of the United States and did away with the provision that direct taxes would have to be apportioned amongst the states so far as income was concerned, and made an exception of income, so that we no longer have to observe that original constitutional provision of the United States and the question don't arise now as to

whether income is property or not, so far as the Constitution of the United States is concerned.

MR. HAIG: Indeed, that is the very point at issue in this Macomber case.

MR. HAWKINS: I don't think so. I think if you will read that case carefully you will find there is another point upon which the Chief Justice decides it. I thought as you do at first. He was trying to draw a grand division for the purpose of supporting these early acts between the great taxing powers of a state and its subject matter as originally arising, and he tried to show that there always had been a peculiar right on the part of the state, or governments, to put taxes on certain classes or things, many great numbers of them I never heard of before, arising under the common law of England, but you will find that he nowhere reverses the proposition that income is property. It is a property right beyond all question. The law protects it. The law enables you to sue to recover it. It can't be anything but property.

Now I want to say this, gentlemen, you have got a vast job before you, as I see it, in harmonizing the laws of this state into something that is right. Everybody wants to pay the right tax. I believe that 50 percent of the values that are taxable in a commercial state go untaxed in this state and are never heard of. I don't know of a county in this state that taxes credits. I know of vast institutions in this state that simply live on credits. I don't know of a county in this state that taxes money in bank. You have a perfect right to tax money in bank, either in this state or in any other state. If a man sends his money out of this state to keep from having it taxed, you have a perfect right to tax him here anyhow on that money. The situs of that that money is here. You can tax incomes realized in other states by persons residing here. The same principle shows you you can tax money sent into other states. I have heard it said you shouldn't put taxes on money or mortgages because if you do the money won't be loaned here. That is the argument of the man that is trying to make money out of loaning money here. You are making this place a harbor of refuge for such persons and requiring the man with physical properties to put up monies for running the courts which guarantee protection for the man loaning money and paying no taxes.

In the same way the laborer in this state, getting vast sums and investing them, he is saying to the real estate man, you educate my children, you pay the taxes for educating them, I am taking the big earnings and I am paying nothing. I don't think anybody is guilty by intent. I think it has all just drifted into this kind of a situation.

MR. HAYDON: Mr. Hawkins, would you suggest when you say money, notes and those things, debts, things of that kind should to taxed; wouldn't it be your idea they should be taxed at the same rate other property is?

MR. HAWKINS: Yes, I think anything else would be illegal and unfair.

## FRIDAY MORNING SESSION, AUGUST 20, 1920.

A meeting of the Special Revenue Commission was held at its office in Santa Fe at 10 o'clock. The meeting was called to order by the chairman, and all members were present.

CHAIRMAN HAGERMAN: Certain matters in connection with taxation came up yesterday, upon which Judge Wright has consented to speak this morning.

JUDGE WRIGHT: As I understand it one of the purposes of this commission is to call attention to erroneous or unconstitutional tax laws now existing, and I wish to call attention to the provisions of Senate Bill No. 7, approved May 8, 1917, at the special session of the legislature. The act controls the assessment of private car companies and express companies. Taking the language of sub-section 2 of Section 1 of the act, according to its literal meaning, the act is unconstitutional under the decision in the case of Union Tank Line vs. Wrght, U. S. 249, p. 275.

The objection to the act as it now reads is that it takes into consideration, as one of the factors for determining the value of cars used in this state, all property of the owner, without regard to whether that property is situated within this state or not. It is of course fundamental that New Mexico cannot tax property beyond the territorial limits of the state.

The State Tax Commission has recognized the invalidity of the act and has ignored the language of the act and assessed private car companies within the limitations laid down in the Union Tank Line case referred to above. I think the act should be amended so as to make it constitutional, thereby avoiding the possibility that some private car company may refuse to pay any tax, thereby causing the state to lose for that year at least, a revenue of some $25,000 or $30,000.

I do not believe that the act as it now stands, or even after it should be amended in the particulars I have suggested, will provide an adequate system of taxation for express companies. At this time, however, I have no suggestion to make as to a proper law for the taxation of express companies.

MR. HAGERMAN: What does the present law provide for?

JUDGE WRIGHT: Sub-sections 1 and 2 of Sec. 1 of the act reads as follows:

> (1) All personal property other than rolling stock located in this state and used in the business of such person or persons, associations, companies or corporations.
>
> (2) Rolling stock used by any such person or persons, associations or corporations, over any railway line in whole or in part within the state. The valuation of said rolling stock for the purpose of assessment shall be such proportion of the full value of the property of said person or persons, associations, companies or corporations, as the aggregate number of all car miles made or traveled by the cars of such person or persons, associations, companies,

or corporations, within the state bears to the whole number of car miles made or traveled by such cars in this and all other states. For the purpose of taxation all cars used exclusively within the state or used partly within and partly without the state, are hereby declared to have a situs in the state. Provided, however, that this act shall not be applicable to cars owned by a railroad company, assessed and taxed in this state, and operated as part of its regular equipment.

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Mr. George G. Tunell, Tax Commissioner of the A. T. & S. F. Ry. Co., having been unable to be present in person at these hearings, submitted a statement which was read by the Secretary of the Commission and made a part of the record of the hearings as follows:

## THE REVENUE SYSTEM OF THE STATE OF NEW MEXICO.

New Mexico Special Revenue Commission,
Santa Fe, New Mexico.

Gentlemen:

In the announcement of July 24th of your public hearings taxpayers are requested to present their views in as brief and as comprehensive a way as is possible. It will be my endeavor to conform to this request.

I shall address myself first to the taxation of railways in New Mexico, particularly from the standpoint of the Santa Fe Railway and I shall speak of the provisions of law and of the actual assessment of the Santa Fe, and then I shall discuss very briefly some aspects of taxation of general interest.

Your State constitution as amended by the people November 3rd, 1914, provides that "taxes levied upon tangible property shall be in proportion to the value thereof." By section 4 of the act approved March 12, 1915, creating the original state tax commission the tax commission is directed and empowered to "determine the actual value of all property belonging to railroads, telegraph, telephone, express, sleeping car and transmission companies within the state of New Mexico, which is used in the operation of their lines."

In my opinion this is a complete grant of power to the state tax commission to assess the property of railways that is used in the operation of their lines regardless of its nature or the form in which it may appear provided always that it is assessed in proportion to value as required by the constitution. If, however, it should be held by those in a position to speak with authority, that the grant of power is restricted it will be entirely agreeable to me if your Commission recommends that the powers of the tax commission be enlarged so that it can take all the facts into consideration in determining the value of railway property for assessment purposes.

Among economists there is no difference of opinion as to what is meant by value although there is considerable difference of opinion as to the psychological processes which lead to a determination of value. The word value presents no difficulties to the layman. He uses the word value synonymously with worth and to him a thing is worth what it will bring or sell for, and thus he is in accord with present day economists.

In law and in the decisions of the courts there is a divergence of view as to what is meant by value and so in some states the officials who are charged with the responsibility of assessing property for taxation are guided in their work by explicit instructions. Section 8 of Article X of the Oklahoma state constitution provides that "All property which may be taxed ad valorem, shall be assessed for taxation at its fair cash value, estimated at the price it will bring at a fair voluntary sale."

Section 4 of Article X of the Missouri state constitution provides that "All property subject to taxation shall be taxed in proportion to its value" and Section 11344 of the Missouri statutes requires the county assessor to take oath that he will "assess all property at what he believes to be its actual cash value." With this brief discussion of constitutional provisions and provisions of law for the assessment of railroads I shall pass on to the next subject.

It seems to be pretty generally thought that by the passage of Congress of the Esch-Cummins' bill the future of the railroads was made secure. Most people are of the opinion that the railroads are assured, even guaranteed, an income that will restore values to their pre-war levels and revive railroad credit in the money markets.

By paragraph (3) of Section 422 of the "Transportation Act, 1920," commonly called the Esch-Cummins' law the Interstate Commerce Commission is directed to fix rates that for the two years beginning March 1, 1920, will yield 5½ per cent on "the aggregate value of the railway property" and for stated purposes the Commission may fix rates that will yield an additional ½ per cent making a total of 6 per cent.

While it was well intended and has proved helpful, the Transportation Act has not restored the credit or pre-war values of the railroads. Nor has restoration been brought about by the decision of the Interstate Commerce Commission in the great rate advance case although the indications are that the decision was formulated with the intention of providing revenues that would offset the $600,000,000 wage increase and provide for a return of 6 per cent on the aggregate value of the railway property.

Railway values and railway credit have not been restored by the passage of the "Transportation Act" and the decision of the Interstate Commerce Commission because for one thing the contemplated return of 6 per cent is substantially below the going interest rate with the best security. I do not suppose it is necessary for me to show that money is now commanding more than 6 per cent and substantially more than 6 per cent with security of the highest order nor do I suppose it is necessary for me to show that there has been any material increase in value of railroad stocks and bonds since the decision of the Interstate Commerce Commission in the rate advance case was made. The advance had long been confidently expected and had been discounted. If the advance had not been granted the bottom would have entirely dropped out of the market for railroad stocks and bonds.

So far as earning power was concerned the railways for the past few months have been operating on a bankruptcy basis and will continue to operate on that basis until the new rates go into effect. Except for the Government guarantee that runs until the end of August

most railroads could not now pay the interest on their bonds to say nothing of dividends and stocks.

To show you the change in the earning power of the Santa Fe System, which has been known as one of the "strong roads," I am introducing the railway operating income, generally called net income, for the period since the return of the railroads to their owners for operation for which statistics are now available, that is, for March, April, May and June, and for the same months for each of the two years of Government operation and for each of the two years immediately preceding Government operation:

RAILWAY OPERATING INCOME.

| | |
|---|---|
| March, April, May and June of 1916 | $15,306,703 |
| March, " " " 1917 | 14,127,748 |
| March, " " " 1918 | 14,827,405 |
| March, " " " 1919 | 7,406,208 |
| March, " " " 1920 | 6,855,049 |

The foregoing statistics tell a sad story but there is another chapter to be added. Since the accounts were made up the United States Railroad Labor Board has handed down (July 20th) its decision in the wages controversy and has granted the railway workers on all railways an aggregate annual increase of about $600,000,000 or a little more than 20 per cent. The increases were made retroactive to May 1st and from that date will add about $2,000,000 to the monthly payroll of the Santa Fe system. For the two months of May and June the back pay will amount, it is estimated, to $4,000,000 and if such is the case the back pay will entirely wipe out the "railway operating income," commonly called net income for the Santa Fe System for the months of May and June which for the two months amounted to but $3,327,138 as made up before the retroactive decision of the Labor Board was known.

While I have not gone into the matter at length I think that I have said enough to show that railroad net income and railroad values would have dropped to the bottom of the sea had they had no other support than railway operating income. So long as Santa Fe General Mortgage 4s sell for 75, Santa Fe preferred stock for 75 and common for 80 it cannot be said that railway values have been restored. No proof should be necessary to show that something has gone wrong with an industry where not withstanding it is estimated that it would now cost twice the amount to reproduce the properties that it would have cost five years ago to build them, purchasers of railroad bonds and stocks of five years ago now can sell only with heavy losses. This is not true of the purchasers of houses, stores, office buildings and industrial plants.

I have now reached the discussion of the concrete question of the assessment of the property of the Santa Fe in the State of New Mexico. The assessments of the property assessed by the State Tax Commission have been as follows:

| | |
|---|---|
| 1915 | $55,651,640 |
| 1916 | 55,650,767 |
| 1917 | 55,322,837 |
| 1918 | 55,107,035 |
| 1919 | 55,107,035 |
| 1920 | 55,056,845 |

During the interval of time represented by these assessments an unparallelled change in values has taken place. To the railroads it was a period of disaster, while to practically all other business enterprises it was a period of unexampled prosperity. Yet, notwithstanding this extraordinary contrast the Santa Fe Railway is bearing substantially the same percent of the total cost of supporting the State and its local subdivisions that it bore when it was sharing with other industries in the modest prosperity of the State.

The market value of the property of the Atchison, Topeka and Santa Fe Railway System in New Mexico, the System value being computed on the high quotations of the New York Stock Market for the week ending August 6, 1920, and the apportionment made to New Mexico on the basis of its percentage of the System all track mileage was $41,839,166.

Early in the winter of 1918 the Bureau of Valuation of the Interstate Commerce Commission made public its estimate of the cost of the reproduction new of the railway property of the Santa Fe System in New Mexico and its estimate of the cost of reproduction less depreciation. These estimates did not include right-of-way, station and shop grounds or rolling stock for which no estimates had been made and they have not yet been made. The prices were as of June 30, 1914, and the inventories were as of June 30, 1916.

| | |
|---|---|
| 1. Estimate of the Interstate Commerce Commission of the cost of reproduction less depreciation of all physical property except land and rolling stock | $40,443,296 |
| 2. Rolling stock as per detailed tax returns filed November 10, 1919 | 6,051,285 |
| 3. Value of right-of-way, station and shop grounds (all lands) | 1,000,000 |
| Total | $47,494,581 |

From these figures it appears that notwithstanding the fact it would have cost, after allowing for depreciation, $47,494,581 to reproduce at the prices of June 30, 1914, the Santa Fe system properties in New Mexico as they stood on June 30, 1916, the property as it now stands will sell for only $41,839,166. While the cost of reproducing the property has enormously increased over the cost computed at June 30. 1914 prices, the value or selling price has steadily dropped. Here is a situation that calls for most serious consideration.

From the statistics that have been presented it is plain that the Santa Fe Lines are now and have been assessed at more than their full value. This is bad enough but it is not the whole story. Your State constitution provides that "Taxes levied upon tangible property shall be in proportion to the value thereof." This, of course, means that assessments shall all be on a full value basis or that all assessments shall be at the same percentage of full value.

The tabulation of real estate transfers prepared by the State Tax Commission and made public last February shows that rural property that was transferred during the period investigated was assessed at but 56 per cent of its "sale value" and that urban property was assessed at but 54 per cent of its "sale value."

I have shown that the Santa Fe Railway for the months of May and June showed a deficit and the results for July and August are not likely to be any more favorable. If there were good prospects that when the advanced rates and fares go into effect that the Santa Fe Railway would be earning the going return on money I should not expect a reduction of its assessment. I do not believe that there is any likelihood that the railroads will be able, for some time to come, to earn the going return on money. It is my opinion that the present depressed condition of railroad values will continue and such being the case I am strongly of the opinion that the Santa Fe is bearing more than its share of the burden of supporting the State and its local sub-divisions and that its assessment should be re-adjusted downward to conform to the decline in its value.

In order to restore and expand their facilities the railroads must be able to go into the money markets and obtain money. To get money there must be a renewal of confidence that money invested in railroads will be permitted to earn the going return.

In the restoration of railroad credit not only the public, the railroad commissions, but the tax commissions also have a part to play. In recent years there has been an enormous increase in the tax burden. This increase has made it more important than ever before that the burden be fairly distributed among the taxpayers according to their ability to pay. Your hearings and recommendations will carry great weight.

I ask you to review the whole question of the distribution of the tax burden in order to determine whether, in view of the great changes that have taken place in economic conditions, some shifting of the tax burden should not be made, both as a matter of equity and as a matter of public expediency, I do not ask for favors.

I have now reached the last subject on my program. It is known to everybody interested in New Mexico revenue matters that a great deal of property, physical property, escapes the assessment rolls, that many land holdings are so inaccurately described that the owners escape taxation and that with few exceptions nearly all property is underassessed and that much of it is grossly underassessed.

The incomplete, the inaccurate and inadequate assessment of the physical property is well known to the State Tax Commission and the causes for the existing conditions are also well known. The machinery of assessment needs strengthening and toning up. The general property tax in New Mexico as in most states will long be the large and reliable source of revenue and I hope Your Honorable Commission will emphasize the desirability and necessity of providing more efficient machnery of administration.

The reforms of the administrative machinery that were recommended by the Chairman of the State Tax Commission, Mr. J. E. Saint, in his address to the Cattle and Horse Growers' Association last March at Roswell are excellent. They appear on pages 142 and 143 of the proceedings of the annual convention of 1920.

I most heartly endorse his recommendation that a permanent tax commission of three men be provided by constitutional amendment to hold office for six years and be nominated by petition with the names

of all candidates appearing without party designation on all party tickets. A commission composed of three men working the year round could do the work that is now being done by the field men and do it better and at less expense.

Chairman Saint also rightly emphasizes the importance of appraisals and assessments on the ground and the necessity of a properly equipped and adequate force in the county assessor's office with a sufficient expense allowance. The present practice is little better than self assessment.

A few years ago the "separation of sources" of revenue was advanced with great confidence as a sure remedy for all tax ills and recently much has been said and written in commendation of "classification of sources." I discussed these two panaceas last March in an address made to the Committee on Revenue, Taxation and Finance of the Illinois Constitutional Convention and as my statement was later printed I should like to supply the Commission with copies rather than repeat what I then said. Since my address was prepared I have received a statement compiled by Frank S. Shaw, Auditor of the State of Iowa, showing the assessed valuation and taxes paid in that state by the various classes of property. Much has been said about "classification of sources" as a revenue producer especially the classification of "moneys and credits" with a low flat tax rate of a fixed number of mills. In Iowa "moneys and credits" are classified and taxed at a flat rate of 5 mills on the dollar. In Iowa dogs are also taxed. In its best year the 5 mill tax on "moneys and credits" yielded the munificent total of $202,035.08 while the dog tax in its most productive year yield the sum of $203,728.50.

I have not the faith that many people have that justice in taxation will be established by setting up new kinds of taxes and in New Mexico least of all because conditions are still comparatively simple. New taxes generally have evils of their own and the income tax is no exception to rule. What is income and where was it earned are questions often difficult of settlement both in fact and in law. What is the real income of a farmer who lives in his own house and who obtains much of the family food and perhaps fuel from the farm. It was by a vote of five to four that the Supreme Court decided in Eisner vs. Macomber that a bona fide stock dividend is not "income" within the meaning of that term in the Sixteenth Amendment.

An income tax is of course justified if it compels contributions of substantial volume to the support of the government from sources which do not contribute or which contribute but little under the general property tax. The members of the Committee on Revenue, Taxation and Finance of the Illinois Constitutional Convention are of the opinion that the tax on incomes should not be in addition to the taxes levied on the ad valorem basis. The majority and the minority reports provide that taxes levied by valuation upon property and paid shall be deducted from the tax on income derived therefrom the same year.

Much has been accomplished in New Mexico during the past five years. The revenue system of the State, however, has a few glaring faults, of law and of administration. Of the faults the unsatisfactory work of the county assessors bulks biggest but the remedies are known and are of easy application. Until the big evils of the present system are removed, and they are known by all who have given any thought

to revenue matters, it will be fantastic to add new provisions of law embodying finely spun theories of taxation.

I hope it will be remembered that people will approve of only about so much reform at one time and that therefore the recommendations made by the Revenue Commission should be simple in form and restricted to the important matters. An elaborate program is likely to appear as an insuperable program.

If I may suggest it, it seems to me your program should be a progressive one. By this I mean that the Commission should formulate a program of taxation that will provide the revenue it thinks will be required and then discuss and recommend additional ways of providing revenue in case more revenue is required.

In conclusion I am going to express the hope that the Commission will not construe its legislative mandate as a direction to find new and additional sources of revenue. The taxpayers are now staggering under heavy tax burdens and they would like to see the load reduced and therefore, hope, that the Special Revenue Commission, before adding new burdens, will determine whether the revenues of the State and its local subdivisions are now being wisely and economically expended.

Respectfully yours,

(Signed) GEORGE G. TUNELL.

Santa Fe, New Mexico, August 21, 1920.

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The letter which follows was written by Mr. Lorin C. Collins, an Attorney of Santa Fe, to Hon. J. E. Saint, President of the State Tax Commission, and by Mr. Saint referred to the Special Revenue Commission. It is therefore made a part of the record of the hearings:

Santa Fe, New Mexico,

August 18, 1.20.

Hon. Joseph E. Saint,

President Tax Commission.

Dear Mr. Saint:

I have noticed in the discussion of the best way of collecting taxes against real property in this state and the practice in this county that there is a tendency to make the collection of taxes an action in personam instead of an action in rem.

For years I was more or less familiar with the method of assessing property for taxation in the County of Cook, Illinois, where it is safe to say that taxes are extended against more separate pieces of property than in the entire state of New Mexico.

The theory of the law is that not the owner of land owes the tax but the land itself. They make the action for the enforcement of the tax an action in rem against the land. No care is taken as to who is the owner and the land is described in the assessment roll and all proceedings are directly against the land.

I inferred from reports of the proceedings of the Tax Commission that there was an effort to look to the owner as the person liable for the tax, while that is a mere incident in my judgment and if carried out liable to cause great loss and perplexity in the securing of the revenues for the support of the government.

If you make the taxes a personal obligation of the man, who is supposed to be the owner, you are running a great risk, owing to the fact that if you so levy the tax as to make it a personal obligation to be safe your assessors should have an abstract of title to fix the liability surely.

Suppose that the assessment of taxes on real estate is made a debt of the actual owner of the land, which is in a fashion the manner of assessment here and that I go to the court house and say a wish to pay the taxes on my real estate. The Treasurer turns to his books and says that you owe on such and such pieces so much.

I pay that which is assessed against me when as a matter of fact a tract I own is not assessed in my name but through an error or on account of a question of disputed ownership is assessed to another. The other does not pay the taxes and eventually the property is sold and a tax deed issued to a purchaser.

Now if the collection of taxes is made a personal matter the personal obligation of the individual to the state it is my opinion that the tax would be worthless and in a proper proceeding would be set aside for the reason that such a proceeding is violative of the constitutional provision that no man's property shall be taken away from him except by due process of law. Due process of law means notice and in the suppositious case there has been no notice of the taxpayer that his property has been assessed and that taxes are due thereon.

You might reply that it is his duty to list his property and that therefore he cannot complain. This is no answer. It is one's duty to pay his debts but even though one fails so to do that does not justify the seizure of his property and the forfeiture thereof for failure so to do. In all personal actions service of notice in some form is necessary to give the court jurisdiction; so in the case made you have not given the owner jursdictional notice.

But even if you could do this and I am wrong in my conclusion, cui bono? What is the sense in paying any attention to the ownership of property? Why burden the assessor and your rolls with the names of the different claimants of title to the real estate you levy your taxes on? It is a matter of absolute indifference who owns the property the tax is assessed against the land and there can be no dispute then if you keep your actions strictly against the land, that the land owes the tax.

One person is quoted as saying that it should be sufficient to publish the name of the owner and the amount of taxes due by him and not publish a list of the property. If the purpose was to make of the collection of taxes a farce this is the way to do it. Some pestiferous or misguided person turns in my property as his, I also turn in the same property and pay my taxes, but the sale is made of the property because the other man did not pay and my title is clouded.

It is my opinion that when you proceed to list all the property in a county without bothering as to ownership and if the taxes are not

paid by some one on that piece you proceed not against the owners but against the land you will collect your taxes and faliing so to do that a tax deed will be of some value.

If I have erred as to the theories being advocated then treat this letter as negligble.

Very sincerly yours,

LORIN C. COLLINS.

After further informal discussion, the Commisison adjourned to meet at the call of the Chairman.

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## STATEMENT BY MR. VAN HOUTEN.

The following statement by Mr. Van Houten was made after the hearings held in Santa Fe by the Special Revenue Commission, and is not a part of such hearings. It is felt that these additional suggestions are of sufficient interest and value to be included in this publication.

Raton, New Mexico,

September 22, 1920.

Hon. H. J. Hagerman,

Chairman, Special Revenue Commission,

Santa Fe, New Mexico.

My Dear Governor:

Yours of August 28th reached me some time ago. I did not answer sooner as I had some further data which I desired to present.

You are entirely correct in your citation of the 1919 assessed valuation of the Rocky Mountain Company. My figures were based on the 1920 returns.

I have just returned from an inspection of open prospecting and diamond drilling, which we are doing back of some of our operating mines, in an endeavor to find more workable coal seams to be operated from our present mining plants. On the whole we have not met with much encouragement; many of the out-croppings being thin or so full of impurities as to be unworkable. As soon as we finish this prospecting campaign, we may pronounce many of our deeded acres non-mineral land.

I think it is rather apropos to mention it at this time, so as to show that, in the event of the passage of an ad valorem tax for mineral land, our mineral acreage would be very reduced, and any assessor or tax commission would have to sustain our contention or prove that our conclusions were incorrect.

Possibly a mining enterprise should not be entitled to preferential treatment in the matter of taxation; at the same time, to a certain extent, pioneering and development of uncertain resources should be recognized. This is not unusual, even in New Mexico, as shown by the

law exempting railways from taxation for a six year period after construction commences; also plaster mills, smelters, beet sugar factories, etc.

Referring to your quotation of taxes paid by the various corporations in 1919: The Chino Copper Company undoubtedly pays a high tax. It also has made large profits; many times larger than any other corporation in the State. You have the reports and can readily see for yourself. The Dawson Company have larger and more complete plants at their two camps than our Company has at its six mining plants; off hand, I would say, double the investment. They have about 40,000 acres of deeded land; their actual acreage of coal land possibly smaller than that of our Company.

The 1920 taxes will be higher than those quoted for 1919. Our Company's taxes, inclusive of income tax, will be about $100,000.00, not including federal taxes.

Referring again to my suggestion for using the unit basis: 5,000 tons per acre, I think ,will be a maximum that can be gained out of the coal seams now being developed and operated. It is a fact that the larger coal occurs at the out-crop and is most everywhere worked out. Most of the Colfax mines are operating on coal less than five feet thick. Maybe the 50 year term is too long. I am of the opinion that 25 years is too short. A fair middle way might be arrived at.

May I call your attention that the net profit of the Rocky Mountain Company has not averaged one-half million dollars, as you state in your letter? Since the Corporation commenced business in 1906, the average net profit has been about $269,000.00 per annum. The year 1917 was an exceptionally good year, owing to high price of coke, but as against this profit we may have to write off the investment of a large part of our coking plant, constructed during the war to assist in manufacturing war supplies. There probably never will be the excessive coke demand we had during the war; in fact many engineers, who profess to know, assert that reverberatory furnaces will displace all coke using furnaces.

Coal mining, under the conditions as exist in New Mexico, requires a large amount for depreciation, deterioration, depletion and renewals. The money for these items has to come out of coal profits. There is no other way of obtaining it.

It seems to me that the term "mineral land," as generally used, is unfair to mine operators. All land is mineral land to a certain extent. I presume in Grant County many thousands of acres are more or less impregnated with copper. In Colfax County there are many thousands of acres containing traces of gold. There are many geologists who assure us of the existence of oil in certain localities. Is it fair to classify this land as copper, gold or oil bearing? Should not the term "mineral land," as used in taxation measures, be—land containing mineral, which can be worked and marketed at a profit, under average mining, market and transportation conditions?

It further occurs to me that the principal factor to be used for the taxation of mines, outside of taxing value of surface of land and mining improvements, is the net income, or a percentage of the gross income derived from mineral production and not the mineral underlying or

supposed to be underlying the surface. A ranch property may have been built on a good oil structure. The assessor only taxes the surface and ranch improvements. This applies to any kind of metal bearing land. Why then should coal bearing land, the existence of coal only being indicated by various scattering, more or less imperfect outcroppings, be classed as coal land or mineral bearing land? It seems to me to be unfair in the extreme.

Bringing the matter home to us, our Company is unfortunate in owning a large acreage on which the mineral is of uncertain value. The existence or non-existence of coal will eventually be determined at large expense for prospecting and drilling. It is difficult to abandon the land proven not to contain workable coal, as one mortgage covers it all, but if an ad valorem tax should be inaugurated, taxing all acreage as coal land, to be assessed at excessive value, as some people advocated it would simply force us to reorganize our Company, or appeal to our bond holders for a segregation of lands which have been proven not to contain coal, keeping the proven coal land for the Company, and letting the mineral value in the rest be sold for taxes.

We are not standing in the way of coal development by the "little fellow," as popularly supposed. There are many acres of Government land underlaid with coal on the mesas east of Raton; much of it better than ours. Why does not someone develop it? Simply because it requires capital and expert knowledge to do so. This, so far, has been lacking. I rather am of the opinion that some day someone will develop those lands successfully. Much of this land has been purchased by small farmers and ranchmen and practically none of it is assessed as mineral land.

In view of the contention that all of the deeded land and the so-called mineral reservation land should be taxed as mineral land by an ad valorem tax, we have again entered upon a prospecting campaign, by surface prospecting and diamond drilling, and I think we will be able, in the course of some years to make the segregation above referred to, and I have no doubt that when finally determined upon, our Company does not own to exceed 25,000 acres of land which contains coal that can be mined and marketed at a profit at some future time.

In order to give you an idea as to the assessment of smaller property in Colorado, I have investigated the tax returns of the Colorado Fuel & Iron Company and the Rocky Mountain Coal & Iron Company, a subsidiary of the Colorado Fuel & Iron Company, for the year 1920, statement of which I herewith enclose. The larger portion of this property, about 222,000 acres, was sold to the Colorado Fuel & Iron Company by the Maxwell Land Grant Company about 20 years ago, and the coal resources in this land are substantially of the same quality as those in Colfax County. The lands were classified as follows:

| | | | |
|---|---|---|---|
| Producing coal lands..... | 2,520½ | acres | $ 756,150.00 |
| Non-producing coal lands..... | 9,556 | acres | 791,250.00 |
| Coal lands worked out..... | 9,911 | acres | 505,350.00 |
| Agricultural land ..... | 948 | acres | 30,615.00 |
| Grazing lands .....249,955 | | acres | 1,253,000.00 |
| Making total of.....272,890½ | | acres | $3,336,365.00 |

or an average of about $12.50 per acre. There has been added for

improvements the amount of $2,091,460.00, making a total valuation of $5,427,825.00. This valuation includes the coal and coking plants at Tercio, Morley, Starkville, Engle, Berwind, Frederick, Toller, Primero, Tobasco, Sopris and Segundo, which mines, in the year 1919, produced 1,710,176 tons of coal As 1919 was a poor year, the tonnage in 1920 will exceed this amount by about a half a million tons.

In comparison, I desire to state that that St. Louis, Rocky Mountain & Pacific Company, for the year 1920, makes a total return of $4,259,144.00. Computing the out-put tax and the surface tax of the lands owned in fee by this Company, we are paying on a basis of about $10.50 per acre. On improvements we pay a great deal more than is paid in Colorado. I might cite you the town of Morley, through which you have often passed, where the improvements and personal property are returned at $189,740.00, the cost of which improvements cannot possibly be less than five or six hundred thousand dollars. Our Company pays on plants on a basis of $1,907,000.00; the Colorado Fuel & Iron Company on $2,091,000.00.

I understand that the policy in Colorado is to tax producing coal lands at $300.00 per acre, which is understood to mean the lands actually in developed coal mine territory. The non-producing coal land is taxed from $10.00 to $150.00 per acre, in accordance with the distance from developed mines.

You may be interested, while examining the enclosed report, in referring to the report of the Colorado Supply Company, which is the Company that operates all the mercantile stores in the different coal mining towns of the Colorado Fuel & Iron Company. In comparison with the property of the Blossburg Mercantile Company, which is the Company which operates the stores for the Rocky Mountain Company, and in comparison with the various mercantile establishments in the State of New Mexico, you will find the valuation of the Colorado Supply Company very much lower, being less than half a million dollars, for all of the buildings, real estate and stocks of goods of sixteen stores. I am not familiar with the details of their business, but should estimate that the merchandise sales of the Colorado Supply Company are not less than $2,000,000 per annum. The Blossburg Mercantile Company, with its six stores, makes a return of $330,000.00 on sales of from $500,000.00 to $600,000.00.

I am not as sanguine as you are that we can depend on administrative skill to interpret our laws. I think that your Commission should write the law as much in detail as possible, as a basis for the Legislature to build on. If you do not, an abortive, unworkable statute is certain to result.

I am enclosing a suggestion for amending the present Act relating to taxation of mining property.

I presume you will have some further hearings or consultations before you make your final report which is to be presented to the Governor, and I would appreciate very much to be heard again on any of the questions under discussion, if it will be of any assistance to you.

Sincerely yours,

J. VAN HOUTEN.

PROPOSED AMENDMENT TO CHAPTER 55, ENTITLED "AN ACT TO PROVIDE FOR THE ASSESSMENT AND TAXATION OF MINES AND MINERAL LANDS AND IMPROVEMENTS USED IN CONNECTION THEREWITH."

(Suggested by Mr. Van Houten.)

SECTION 4, after the sixteenth line insert as follows:

"Provided, however, that the amount of mineral land to be claimed as contiguous to an operating mine shall be determined by taking the average annual production in tons for the three year period prior to the year in which the tax is to be assessed, and dividing the amount so obtained by the numeral 166.

"If the three year production record is not available, a lesser number of years may be taken, or, in the case of a new operation, estimate of production may be accepted, such estimate, however, to be corrected each year to actual production figures, until a three year period has been reached, when correction on three year basis must again be made."

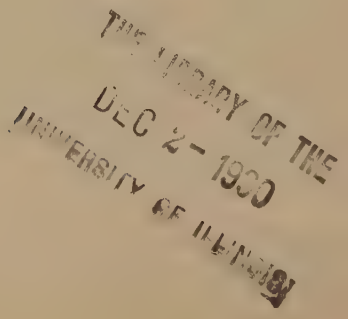
SECTION 8, amend the second paragraph to read as follows:

"All nonproducing mining claims and other nonproducing mineral lands, known to contain, or supposed to contain valuable deposits of coal, ores or other minerals, in commercially workable quantities, shall be assessed and taxed on a basis of $10.00 per acre, as undeveloped mineral land, in addition to the surface value for grazing, agricultural, timber or other purposes.

"Where the minerals or mineral rights in the land belong to owners, other than the owners of the land, the mineral rights shall be assessed separately against the owners thereof, and the taxes thereon shall be a lien on the property assessed only.

"The term 'mineral land,' as herein used, is hereby understood to mean, land which has been prospected sufficiently to show that under average and normal market and transportation conditions, the mineral therein contained may be mined and marketed at a profit commensurate to the amount of capital required for such mining, transporting and marketing, and for this purpose all books and records pertaining to prospecting, drilling and technical examination of land of any person or corporation shall be open to examination by the Tax Commission or its representatives."

Raton, New Mexico, September 22, 1920.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